82-1127

No. ____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,
Petitioner,

v.

ELIZABETH HALL, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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Questions Presented

1. Whether a Texas Court constitutionally may assert *in personam* jurisdiction over a nonresident Colombian corporation where the plaintiffs' wrongful death actions arose out of a helicopter accident in Peru and where the Colombian corporation's sole contacts with Texas involved equipment purchases from a third party Texas corporation and a single contract discussion with decedents' employer in Texas and where plaintiffs' causes of action did not arise out of these contacts.

2. Whether the due process and equal protection clauses of the Fourteenth Amendment are violated by the exercise of *in personam* jurisdiction over a nonresident

alien corporation under circumstances in which a nonresident United States corporation could not constitutionally be subjected to jurisdiction.[1]

---

[1] The following persons and entities were parties before the Texas Supreme Court: Elizabeth Hall, individually and as next friend of Delbert Hall, a minor; Susan Carol Porton; Harve Porton and Verda Ola Porton, individually and as next friends of Jeffery Taylor Porton, a minor; Naomi Lewallen, individually and as next friend of Ginger Lewallen, a minor; Gary Lewallen; Louise C. Moore (appellants); and Helicopteros Nacionales de Colombia, S.A. (appellee).

Helicopteros Nacionales de Colombia, S.A. (hereinafter Helicol), is a Colombian Corporation. Aerovias Nacionales de Colombia (known as Avianca) owns approximately 94 percent of Helicol's capital stock. The remainder of its stock is held by Aerovias Corporacion de Viajes and four South American individuals.

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Opinions Below

The final opinion of the Supreme Court of Texas appears in the appendix to this petition with the concurring opinion of Justices Campbell and McGee and the dissenting opinion of Justice Pope in which Chief Justice Greenhill and Justice Barron joined. (App. pp. 1a-14a, 32a-45a). Also appearing in the appendix are the initial opinion of the Supreme Court of Texas which was withdrawn on respondents' motion for reconsideration (App. pp. 46a-57a), the opinion of the Court of Civil Appeals of the State of Texas (App. pp. 63a-71a), and the directive of the trial court, the District Court of Harris County, Texas, for an order denying petitioner's motion to dismiss on grounds of lack of *in personam* jurisdiction. (App. pp. 72a-73a).

The final opinion of the Supreme Court of Texas is reported at 638 S.W.2d 870 (Tex. 1982). The opinion of

the Court of Civil Appeals is reported at 616 S.W.2d 247 (Tex. Ct. Civ. App. 1981).

Jurisdiction

On October 6, 1982, the Supreme Court of Texas denied petitioner's motion for reconsideration of its July 21, 1982 judgment. (App. pp. 74a-75a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3) (1982).

Constitutional Provision Involved

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

On January 26, 1976, a helicopter owned by Helicopteros Nacionales de Colombia, S.A., (hereinafter Helicol), crashed in Peru, killing respondents' decedents, employees of Williams-Sedco-Horn, a joint venture headquartered in Oklahoma. Respondents' decedents were United States citizens domiciled in states other than Texas, hired by Williams-Sedco-Horn to provide services in Peru in furtherance of the joint venture's contract with Petro Peru, the Peruvian state-owned oil company, to construct a pipeline from the jungles of Peru to the Pacific Ocean.

For purposes of its work on the Peruvian pipeline, Williams-Sedco-Horn formed a consortium under Peruvian law operating under the name "Consorcio". Consorcio designated Lima, Peru, as its legal residence, as Peruvian law forbade construction of the pipeline by a non-Peruvian company.

Helicol, a Colombian corporation having its principal place of business in Bogota, Colombia, is in the business of providing helicopter transportation in South America to oil and construction companies. Helicol was initially contacted in South America by a member of Consorcio, Williams International Sundamerica, Ltd., (hereinafter Williams), a construction company headquartered in Oklahoma, with which Helicol had previously done business in South America. Helicol was asked to send an officer to Tulsa, Oklahoma, to discuss a potential contract for the performance of services in Peru. After the commencement of a meeting in Tulsa, Helicol's officer was requested to fly to Houston, Texas, on Williams' corporate aircraft to meet with the other members of Consorcio. Some preliminary contractual discussions occurred at the Houston meeting. Thereafter, a contract was signed in Peru on November 11, 1974, by Helicol's Peruvian lawyer and by a Peruvian resident representing Consorcio.

Prior to its execution, the contract had been approved by the Peruvian Air Force, as required by Peruvian law. It was written in Spanish on official government stationery and provided that the residence of all parties to the contract would be Lima, Peru, and further provided that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts. It also provided that Consorcio would make payments to Helicol's account with the Bank of America in New York City.

The following significant facts are a part of the record in the courts below:

1. Helicol has never performed any of its business or helicopter operations in Texas;

2. Helicol has never solicited any business in Texas;

3. Helicol has never sold any products that reached Texas;

4. Helicol has never been authorized to do business in Texas and has never had an agent for the service of process in Texas;

5. Helicol has never recruited employees in Texas;

6. Helicol has never owned real or personal property in Texas and has never had any records or offices in Texas or representatives based in Texas;

7. The contract between Helicol and Consorcio was executed in Peru to be performed in Peru;

8. Payment for helicopter services in Peru rendered to Consorcio was made to Helicol, pursuant to the contract terms, by deposit of funds in a New York bank specified by Helicol;

9. The only business transactions ever entered into in Texas by Helicol were the purchase of several Bell Helicopters and associated equipment which included transitional training on the operational characteristics and maintenance requirements of the purchased equipment;

10. The tort causes of action sued upon arose out of a helicopter accident in Peru;

11. Neither respondents nor respondents' decedents were or are residents or citizens of Texas.

Respondents filed four wrongful death actions in the District Court of Harris County, Texas, claiming that

negligence on the part of Helicol proximately caused the helicopter accident in Peru on January 26, 1976 in which respondents' decedents were killed.

Helicol filed special appearances and moved to dismiss respondents' actions for lack of *in personam* jurisdiction. After an evidentiary hearing, Helicol's motions were denied (App. pp. 72a-73a), respondents' actions were consolidated for trial and judgment subsequently was entered against Helicol on a jury verdict in favor of respondents.

On January 22, 1981, the Court of Civil Appeals reversed the judgment of the trial court and held that the trial court lacked *in personam* jurisdiction over Helicol. (App. pp. 63a-71a)

On February 24, 1982, the Texas Supreme Court affirmed the decision of the Court of Civil Appeals. The respondents thereafter moved for reconsideration of the decision. The Supreme Court of Texas, on July 21, 1982 reversed itself, withdrew its earlier opinion and filed a second opinion reversing the judgment of the Court of Civil Appeals and affirming the decision of the trial court. Justice Campbell filed a concurring opinion in which Justice McGee joined. Justice Pope filed a dissenting opinion in which Chief Justice Greenhill and Justice Barrow joined. Helicol then moved for reconsideration which the Supreme Court of Texas denied on October 6, 1982, with three justices dissenting. (App. pp. 74a-75a).

The Supreme Court of Texas, in reaching its decision that personal jurisdiction could properly be exercised over Helicol by the Texas trial court, determined that the Texas long-arm statute, Tex. Rev. Civ. Stat. Ann. art. 2031b (1982) (App. pp. 76a-78a), permitted Texas courts to exercise jurisdiction to the fullest extent permitted by

the Constitution, citing *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W. 2d 760 (Tex. 1977). This determination was rejected by the dissenting justices, who stated: "Article 2031b requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction." (emphasis in original) (App. p. 33a).

The Texas Supreme Court went on to hold that "Helicol's numerous and substantial contacts do constitute 'doing business' in this State and the trial court's actions do not offend due process." (App. p. 7a).

In his concurring opinion (App. p. 10a), Justice Campbell stated that federal due process in respect to *in personam* jurisdiction may be applied differently where the defendant is an alien resident of a foreign country rather than a United States citizen. (App. p. 10a). *See also* note 6 *infra* at p. 18. This rationale was refuted in Helicol's motion for reargument and rejected by three of the justices of the Texas Supreme Court. (App. pp. 44a-45a).

Reasons For Granting Writ

The Supreme Court of Texas incorrectly held that Helicol, an alien nonresident corporation, was doing business in Texas because Helicol made equipment purchases in Texas and had a single contract discussion in Texas and, therefore, was subject to the jurisdiction of the Texas courts on a cause of action unrelated to its contacts with Texas.

I

THE DECISION OF THE TEXAS SUPREME COURT CONFLICTS WITH THE DECISION OF THE COURT IN *PERKINS* v. *BENGUET CONSOLIDATED MINING CO.*, 342 U.S. 437 (1952), AND IS CONTRARY TO THE PRINCIPLES OF *IN PERSONAM* JURISDICTION OVER NONRESIDENT CORPORATE DEFENDANTS LAID DOWN BY THE COURT IN *INTERNATIONAL SHOE CO.* v. *WASHINGTON*, 326 U.S. 310 (1945), AND *WORLD-WIDE VOLKSWAGEN CORP.* v. *WOODSON*, 444 U.S. 286 (1980)

The issue in this case is the quality and nature of a nonresident corporation's activities in a state which, as a matter of federal due process, will permit that state to entertain a cause of action against that nonresident corporation, where the cause of action did not arise from the corporation's activities in the state.

In reaching its decision, the Texas Supreme Court violated the teachings of the Court in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) and *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980). The decision of the Texas Supreme Court was an unconstitutional exercise of *in personam* jurisdiction over Helicol which this Court should reverse and set aside as was done in *Kulko* v. *Superior Court*, 436 U.S. 84 (1978) and *World-Wide Volkswagen Corp.* v. *Woodson*, *supra*.

In *International Shoe Co.* v. *Washington*, 326 U.S 310 (1945), the Court recognized that different due process considerations are involved where the defendant's activities in the state are so substantial and continuous as to constitute residency in the state and, on the other hand, where the nonresident defendant's contacts with the

state, although incidental, transitory and infrequent, gave rise to the cause of action.[2]

International Shoe teaches that while a small number of contacts between the defendant and the forum state might be a sufficient basis for the exercise of personal jurisdiction over a defendant with respect to a cause of action arising out of a defendant's activities in the forum state, a qualitatively different relationship is required where the cause of action is unrelated to the contacts of the defendant with the forum state.

> [I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there [citations omitted]. . . . To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

326 U.S. at 317.

The Texas Supreme Court could not and did not hold that the cause of action arose from Helicol's contacts with Texas. Rather, it held that Helicol's contacts with the state were sufficient to permit Texas to exercise *in personam* jurisdiction over Helicol even though the cause of action did not arise from such activities in the state.

---

[2] The Court in Shaffer v. Heitner, 433 U.S. 186, 204 (1977), reiterated that a relationship between the forum and the cause of action is required for the assertion of jurisdiction over a nonresident defendant, stating that "the relationship among the defendant, the forum and the litigation [is] . . . the central concern of the inquiry into personal jurisdiction."

The issue in this case is the same issue that was before the Court in *Perkins* v. *Benguet Consolidat. l Mining Co.*, 342 U.S. 437 (1952). As the Court stated the issue in *Perkins:*

> It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to *permit* Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio (emphasis in original).

342 U.S. at 447.

In vacating the decision of the Supreme Court of Ohio which held that Ohio courts could not exercise *in personam* jurisdiction over a Phillipine defendant on a cause of action arising outside Ohio, the Court, in *Perkins*, emphasized that the defendant had moved its operations to Ohio during World War II and that the president of the company operated from Ohio, carrying on a "continuous and systematic" supervision of the company. Thus the Court concluded that because of the defendant's substantial and continuous activities in Ohio, "it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding." 342 U.S. at 448.

The due process standard the Court established in *Perkins* is that with respect to a foreign based cause of action, the nonresident corporation's activities must at least be "continuous" and "substantial." 342 U.S. at 445-447. *See* Restatement (Second) of Conflict of Laws § 47 (1971).

The activities or contacts of Helicol in Texas were neither continuous nor substantial.

The Texas court, after reciting Helicol's "contacts" with Texas, held that "these contacts constitute sufficient minimum contacts to find Helicol amenable to the jurisdiction of the Texas courts." (App. p. 3a).

The minimum contacts standard the Texas Supreme Court applied with respect to a cause of action which did not arise from Helicol's contacts with the state was contrary to the Court's decision in *Perkins*, as Justice Pope of the Texas Supreme Court pointed out in his dissenting opinion. (App. pp. 43a-44a).[3]

The Supreme Court of Texas in concluding that Helicol was "doing business" in Texas and that Texas courts could exercise *in personam* jurisdiction over Helicol without violating due process relied upon the following:

> (a) Purchases by Helicol of helicopters from a Texas company, Bell Helicopter Company, and certain transition training given to Helicol employees incident to its equipment purchases;
>
> (b) A single business meeting between a representative of Helicol and Williams-Sedco-Horn in Houston, Texas, for the purpose of discussing a potential contract with Consorcio; and
>
> (c) The payment of funds to Helicol by drafts drawn on a Texas bank.

The items listed in the opinion of the Supreme Court of Texas (App. p. 3a) can be reduced to the contacts listed above.

As discussed in Point II, *infra*, purchases in the forum state as distinct from sales in the forum state do not

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[3] The decision of the Texas Supreme Court also conflicts with decisions in the United States Courts of Appeals for the First and Fourth Circuits. Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745 (4th Cir.), *cert. denied*, 404 U.S. 948 (1971); Seymour v. Parke, Davis & Co., 423 F.2d 584 (1st Cir. 1970).

constitute doing business in the forum. Similarly, one discussion of a potential contract by an officer of Helicol in Texas cannot provide a basis for a finding that Helicol was "doing business" within the state. One contact cannot constitute either substantial or continuous activity. Helicol did not even solicit this business within the State of Texas. It was contacted in South America by a member of Consorcio. Its services were solicited.[4]

The Texas Supreme Court also relied upon Helicol's receipt of contractual payments drawn on a Texas bank as a basis for the exercise of *in personam* jurisdiction. Drafts forwarded by Consorcio from Texas to Helicol's bank in New York for deposit do not constitute payments made in Texas. For its part, Helicol had no bank account or representative for receipt of payments within Texas. Furthermore, the election by Consorcio to draw upon a Texas bank for the purpose of making payments in New York was its own. The unilateral act of a third party or the other party to the action cannot provide the basis of personal jurisdiction over a nonresident. *See, e.g., World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 296 (1980); *Kulko* v. *Superior Court*, 436 U.S. 84 (1978).

In sum, Helicol's "contacts" with the State of Texas as described by the Supreme Court of Texas do not constitute "substantial" and "continuous" activity. *Perkins*

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[4] Helicol's officer testified at the evidentiary hearing held on the question of personal jurisdiction that he had no intention of traveling to Texas when he left South America, that he planned to travel only to Oklahoma pursuant to the request of a member of Consorcio with whom Helicol had previously dealt, that once it was deemed necessary by the Oklahoma member of Consorcio to travel to Texas, a corporate aircraft was made available for that purpose, that his wife remained in Tulsa while he was flown to Houston and that he returned to Oklahoma immediately after the Houston meeting.

v. *Benguet Consolidated Mining Co.*, 342 U.S. at 446, 447.

Where, as here, respondents' cause of action did not arise from Helicol's contacts with Texas, *Perkins* and *International Shoe* mandate that there must be substantial business activity by a nonresident defendant to satisfy federal due process requirements.

The Texas court ignored the *Perkins* and *International Shoe* standards and its decision is in direct conflict with those decisions.

World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980), is the most recent statement of the Court on the due process requirements governing the amenability of a nonresident defendant to suit in a distant forum. In that case, the cause of action arose from an automobile accident in Oklahoma and the Court held that, notwithstanding the accident in the forum state, minimum contacts must also exist between the defendant and the forum state. 444 U.S. at 292. The Court held that there were no such contacts between the forum and the defendant and that the due process clause does not contemplate *in personam* jurisdiction where the corporate defendant had "no contacts, ties or relations" with the forum. *Id.* at 294 (*citing International Shoe*, 326 U.S. at 319).

The dissenting Justices in *World-Wide Volkswagen* were of the view that the Oklahoma court constitutionally could exercise *in personam* jurisdiction because of the interest of the forum in adjudicating the action which arose in the forum state. The dissenting Justices agreed that minimum contacts must exist among the parties, the contested transaction and the forum state. 444 U.S. at 310-311 (Mr. Justice Brennan, dissenting), 313 (Mr. Justice Marshall, dissenting), 318 (Mr. Justice Blackmun, dissenting).

World-Wide Volkswagen was a minimum contacts case dealing with a forum-based cause of action. The Supreme Court of Texas misread *World-Wide Volkswagen* by applying the minimum contacts principles announced in that case to a case where the cause of action is foreign-based and where, according to *International Shoe* and *Perkins*, substantial business activity on the part of the nonresident corporate defendant constitutionally is required.

The constitutional principle underlying the Court's statement in *Kulko* v. *Superior Court*, 436 U.S. 84 (1978) (a custody case involving a natural person as defendant) is equally applicable to the present case involving an alien corporate defendant.

> To hold such temporary visits [defendant's visit to California in 1959 on a three day military stopover on his way to Korea and a four hour stopover in 1960 on his return from Korean service] to a State a basis for the assertion of *in personam* jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment.

436 U.S. at 93.

The assertion of *in personam* jurisdiction over Helicol by Texas courts on the basis of the incidental and infrequent contacts described above with respect to a cause of action unrelated to Texas was an unconstitutional exercise of *in personam* jurisdiction over Helicol in violation of federal due process and contrary to the decisions of the Court. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980); *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952); *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945); Sup. Ct. R. 17.1(c).

II

THE HOLDING OF THE TEXAS SUPREME COURT THAT AN ALIEN NONRESIDENT CORPORATION WAS SUBJECT TO THE *IN PERSONAM* JURISDICTION OF A STATE COURT BECAUSE OF ITS PURCHASE OF AMERICAN PRODUCTS IN THE FORUM STATE IS CONTRARY TO THE DECISION OF THE COURT IN *ROSENBERG BROTHERS & CO.* v. *CURTIS BROWN CO.*, 260 U.S. 516 (1923), AND PRESENTS AN IMPORTANT QUESTION HAVING WIDE-RANGING IMPLICATIONS FOR UNITED STATES TRADE RELATIONS

In concluding that Helicol was doing business within the State of Texas, the Supreme Court of Texas relied heavily upon Helicol's purchase of equipment from Bell Helicopter Co., a Texas manufacturer. (App. p. 3a) This Court expressly has held that purchases by a nonresident corporation within the forum state are insufficient to constitute "doing business" for purposes of assessing the corporation's amenability to personal jurisdiction.

In *Rosenberg Brothers & Co.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923), appellant sought a reversal of the lower court's holding that purchases within the forum state did not constitute "presence" for purposes of asserting jurisdiction over a nonresident defendant. In affirming the lower court's decision, the Court stated:

> [Appellee's] only connection with [the forum] appears to have been the purchase there from time to time of a large part of the merchandise to be sold at its store [in another state] . . . The only business alleged to have been transacted [in the forum] . . . related to such purchases of goods by officers of a foreign corporation. Visits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the State.

260 U.S. at 518. *See also Hutchinson* v. *Chase & Gilbert, Inc.*, 45 F.2d 139 (2d Cir. 1930) (L. Hand, J.).

The decision of the Texas Supreme Court conflicts with the holding of this Court in *Rosenberg*.

In addition, as *in personam* jurisdiction was asserted over an alien corporation because of its purchase of American products, the decision of the Texas Supreme Court presents serious problems for nonresident alien purchasers.

Prospective foreign purchasers of American products may be deterred from buying them if, in so doing, they may be forced to defend lawsuits in the United States arising from foreign disputes unrelated to the purchases.

As the holding of the Texas Supreme Court is not only inconsistent with *Rosenberg Brothers & Co.*, v. *Curtis Brown Co.*, but also imposes an unnecessary obstacle to United States trade relations, the Court should grant this petition for a writ of certiorari to address the question whether purchases from a forum vendor by a nonresident purchaser constitute a sufficient basis for the assertion of *in personam* jurisdiction over the nonresident purchaser with respect to a foreign cause of action which does not arise from such purchases. Sup. Ct. R. 17.1(b), (c).

III

THE DECISION OF THE TEXAS SUPREME COURT CONFLICTS WITH DECISIONS OF THE HIGHEST COURTS OF SEVERAL STATES AND DEMONSTRATES THE NEED FOR FURTHER CLARIFICATION OF FEDERAL DUE PROCESS AS IT RELATES TO *IN PERSONAM* JURISDICTION OF NONRESIDENT CORPORATIONS

The Texas Supreme Court relies heavily, if not entirely, upon purchases made by Helicol in Texas as a basis for finding that Helicol had numerous and substantial business contacts in Texas. This ruling is in conflict with

Marshall Egg Transport Co. v. *Bender Goodman Co.*, 275 Minn. 534, 148 N.W. 2d 161 (1967), and *Conn* v. *Whitmore*, 9 Utah 2d 250, 342 P.2d 871 (1959).

In *Marshall Egg*, the Supreme Court of Minnesota held that a series of purchases of eggs in the forum state was insufficient to support the assertion of *in personam* jurisdiction over the out-of-state purchaser. The court stated:

> Plaintiff asserts, however, that because it had had a series of similar transactions with defendant the latter should be considered subject to the jurisdiction of the Minnesota court. The trial court disagreed with this reasoning and took the position that the question involved herein should not depend on the quantity of transactions but rather on the nature of the transaction giving rise to this controversy. We again agree with the trial court that, under the circumstances here, where a single transaction would lack the degree of participation necessary to require defendant's submission to the jurisdiction of this state, such a deficiency could not be cured merely by repeated similar transactions.

275 Minn. at 538, 148 N.W.2d at 164.

In *Conn*, the Supreme Court of Utah, in refusing to give full faith and credit to an Illinois judgment, held that where a contract for the purchase of horses was entered into in Utah, but with inspection and delivery occurring in Illinois, such did not amount to the transaction of any business within the forum state (Illinois). Thus, according to the Utah court, sufficient minimum contacts did not exist so as to constitutionally allow the forum state (Illinois) to assert jurisdiction over the purchaser.

The *Conn* court stated: "[T]he correspondence through the mails between the parties plus the incidental activi-

ties of having an agent inspect the horses and taking delivery in Illinois did not amount to the 'transaction of any business' within the state of Illinois." 9 Utah 2d at 255, 342 P.2d at 875.

The existence of conflicting state court decisions on the issue of *in personam* jurisdiction over nonresident corporations was noted by Mr. Justice White in his dissent from the denial of a writ of certiorari in *Lakeside Bridge & Steel Co.* v. *Mountain State Construction Co.*, 597 F.2d 596 (7th Cir. 1979, *cert. denied*, 445 U.S. 907 (1980). Mr. Justice White stated:

> The question of personal jurisdiction over a nonresident corporate defendant based on contractual dealings with a resident plaintiff has deeply divided federal and state courts [citations omitted]. . . . The question at issue is one of considerable importance to contractual dealings with purchasers and sellers located in different states. The disarray among federal and state courts noted above may well have a disruptive effect on commercial relations in which certainty of result is a prime objective.[5]

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[5] In two subsequent denials of petitions for writs of certiorari, Mr Justice White and Mr. Justice Powell filed similar dissenting opinions on denials of petitions for writs of certiorari. Chelsea House Publishers v. Nicholstone Book Bindery, Inc., 621 S.W.2d 560 (Tenn. 1981), *cert. denied*, 455 U.S. 994 (1982); Baxter v. Mouzavires, 434 A.2d 988 (D.C. 1981), *cert. denied*, 455 U.S. 1006 (1982).

IV

THE PRINCIPLE THAT AN ALIEN NONRESIDENT CORPORATION IS NOT ENTITLED TO THE SAME RIGHTS OF FEDERAL DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS ARE UNITED STATES CORPORATIONS ON THE QUESTION OF AMENABILITY TO SUIT IN STATE AND FEDERAL COURTS PRESENTS AN IMPORTANT CONSTITUTIONAL QUESTION WHICH SHOULD BE RESOLVED BY THE COURT IN THE INTEREST OF THE FOREIGN COMMERCE OF THE UNITED STATES

Although it is difficult to be certain of the complete rationale of the Texas Supreme Court, the justices who filed a concurring opinion indicated that the application of "due process," with respect to *in personam* jurisdiction, is different where the lawsuit is brought by a United States citizen against an alien defendant, rather than against another United States citizen.[6] (App. p. 10a).

As the dissenting justices noted:

> A separate concurring opinion filed on rehearing contends that the "long arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due

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[6] The concurring justices in their opinion dated July 21, 1982 had stated that because the jurisdictional issue is between countries, namely citizens of the United States and a resident of Colombia, "our 'due process' application must be broader in scope." (App. p. 10a) On September 17, 1982, after Helicol's motion for rehearing was filed raising the above issue, the Clerk of the Texas Supreme Court advised West Publishing Company by letter that the language: "Therefore, our 'due process' application must be broader in scope" was removed from the opinion and the following language was substituted: "Therefore, 'due process' in this case must be universal in its application." (See App. p. 10a)

> process than United States citizens [citations omitted], it is nevertheless inconsistent with the way due process has been applied in previous cases. (App. p. 44a).

The issue in this case is whether the alien status of the defendant is a factor which may be considered by a court in determining the scope of due process, and, if so, whether an alien nonresident corporation enjoys less due process than a United States corporation and may constitutionally be required to defend legal actions in state courts from which United States corporations would be immune.

The due process clause of the United States Constitution refers to "persons," without distinction as to their citizenship. Additionally the equal protection clause forbids a state to deny to any person within its jurisdiction the equal protection of the laws.

The Texas Supreme Court appears to have decided that due process requirements are lessened in the case of an alien corporation. Even if this were a permissible construction of the due process clause, it would be impermissible under the equal protection clause.

The equal protection clause applies to Helicol's rights since, for the purpose of determining the question of *in personam* jurisdiction, Helicol had submitted to the jurisdiction of the Texas courts for the resolution of that question. *Cf. Plyler* v. *Doe*, 102 S.Ct. 2382 (1982).

To the extent that the decision of the Supreme Court of Texas was based upon a lesser standard of due process because Helicol was an alien nonresident corporation, the decision should be reversed and the principle reestablished that alien corporations are entitled to be judged by the same due process standards as United States corporations.

Any dilution of the mandate of the Fourteenth Amendment concerning equal protection of the laws as it relates to alien corporations should be examined by the Court before further confusion ensues. Such dilution will have a negative effect upon alien nonresidents who conduct any type of business transactions with United States citizens.

CONCLUSION

For the reasons set forth above, petitioner urges that this petition for a writ of certiorari be granted.

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Dated: January 4, 1983

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CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this fourth day of January, 1983, served three copies of the foregoing petition for a writ of certiorari to the Supreme Court of Texas upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

George Pletcher, Esq.
Helm, Pletcher & Hogan
2800 Two Houston Center
Houston, Texas 77002

/s/ Thomas J. Whalen

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INDEX TO APPENDIX

IN THE SUPREME COURT OF TEXAS

No. C-243

ELIZABETH HALL, *et al.*,

Petitioners,

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Respondent.

FROM HARRIS COUNTY FIRST DISTRICT

ON MOTION FOR REHEARING

Our opinion of February 24, 1982, is withdrawn and this opinion is substituted therefor.

Elizabeth Hall and the other plaintiffs in the trial court (Hall) are the survivors of four citizens of the United States killed in a helicopter crash in Peru while working in that country constructing a pipeline. Hall sued Helicol, the owner and operator of the helicopter which crashed, in Harris County, Texas, in four separate causes of action. Helicol entered a special appearance in each of the actions, to contest the jurisdiction of the Texas court pursuant to Rule 120a, TEX. R. CIV. P., all of which were overruled by the respective trial courts. The four actions were consolidated for trial resulting in a judgment for Hall. The court of civil appeals reversed the judgment of the trial court and ordered the case dismissed for lack of jurisdiction. 616 S.W.2d 247. We reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

The only issue before us is whether under the facts of this cause of action, was Helicol amenable to jurisdiction in Texas. Therefore, this Court must decide whether the trial court's exercise of jurisdiction over Helicol was consistent with the requirements of due process of law under the Constitution of the United States.

In 1974, Petro Peru, the Peruvian state owned oil company, made a contract with Williams-Sedco-Horn,[1] (referred to as Consorcio in their contract), a joint venture based in Houston, Texas, to construct a pipeline from the interior of Peru to the Pacific Ocean. The defendant, Helicol, was brought into the project by Williams-Sedco-Horn to provide necessary transportation of workers and supplies, by helicopter, to regions where there were no roads. Helicol was originally contacted by a Williams executive who had contracted with Helicol in the past. In response to that contact, the general manager of Helicol flew to Oklahoma, and then proceeded to Houston, Texas to negotiate with the three members of the joint venture. After reaching agreement on all terms of the contract in Houston, those terms were related to Helicol's office in Peru. The contract in its final form was approved by the Peruvian Air Force as required by Peruvian law, typed in Spanish and executed by representatives of all parties in Peru. Helicol did not maintain an office in Texas, had no designated agent for service of process in Texas, was not authorized to do business in Texas, performed no helicopter operations in Texas, and did not recruit employees in Texas.

The deceased workers here in question, were not Texas residents, but were all United States citizens. They were hired by Williams-Sedco-Horn, in Houston, Texas, and sent to Peru to work on the pipeline. The workers were killed in crash of a Bell helicopter, owned and operated by Helicol in Peru, during their transportation pursuant to the contract between Helicol and Williams-Sedco-Horn.

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[1] Williams-Sedco-Horn is a joint venture composed of Williams International Sundamericana, Ltd., a Delaware corporation headquartered in Tulsa, Oklahoma, Sedco Construction Corporation, a Texas corporation, and Horn International, Inc., a Texas corporation.

In addition to negotiating this contract, Helicol committed all of the following acts in Texas:

a. Purchased substantially all of its helicopter fleet in Fort Worth, Texas;

b. Did approximately $4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of $50,000 per month with Bell Helicopter Company, a Texas corporation;

c. Negotiated in Houston, Harris County, Texas, with a Texas resident, which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action (previously mentioned), and wherein Helicol agreed to obtain liability insurance payable in American dollars to cover a claim such as this;

d. Sent pilots to Fort Worth, Texas to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia;

e. Sent maintenance personnel and pilots to Texas to be trained;

f. Had employees in Texas on a year-round rotation basis;

g. Received roughtly $5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and

h. Directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question. (Involved leasing of a large helicopter capable of moving heavier loads for Williams-Sedco-Horn.)

We hold that these contacts constitute sufficient minimum contacts to find Helicol amenable to the jurisdiction of the Texas courts.

In their briefs before this Court, all parties agreed that our opinion in *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760 (Tex. 1977) controlled the disposition of this case.

In *U-Anchor*, we stated:

> Article 2031b provides that a nonresident entering into a contract with a Texas resident performable in part by either party in Texas shall be deemed to be doing business in Texas. . . . We agree that in this respect, as well as with the respect to 'other acts that may constitute doing business,' Article 2031b reaches as far as the federal constitutional requirements of due process will permit. We let stand the statement in *Hoppenfeld* v. *Crook*, 498 S.W.2d 52 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 'that the reach of Art. 2031b is limited only by the United States Constitution.' . . . Furthermore, such a construction is desirable in that it allows the courts to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.'

In the *U-Anchor* opinion we specifically adopted the above language from *Hoppenfeld*. Also in *U-Anchor*, this Court approved the three-prong test set out in *O'Brien* v. *Lanpar Company*, 399 S.W.2d 340 (Tex. 1966). That three-prong test is:

(1) the nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;

(2) the cause of action must arise from, or be connected with, such act or transaction; and

(3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice; consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

The second prong of the *O'Brien* test requiring that the cause of action must arise out of the contacts with the forum state, has been the subject of some controversy ever since the *O'Brien* test was adopted. The second prong is useful in any fact situation in which a jurisdiction question exists; and is a

necessary requirement where the nonresident defendant only maintained single or few contacts with the forum. However, the second prong is unnecessary when the nonresident defendants presence in the forum through numerous contacts is of such a nature, as in this case, so as to satisfy the demands of the ultimate test of due process. Accordingly through the statutory authority of Art. 2031b TEX. REV. CIV. STAT. ANN. there remains the single inquiry: is the exercise of jurisdiction consistent with the requirements of due process of law under the United States Constitution? This inquiry is frequently put into the following terms: ". . . due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945), quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

The U.S. Supreme Court has broadened the parameters of due process to allow inquiry into other "relevant factors." Recently in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), the Supreme Court reiterated that the relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." Citing, *International Shoe*, supra. In looking to this reasonableness, the U.S. Court stated that the burden on the defendant:

> . . . while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, 223, 2 L.Ed.2d 223, 78 S.Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko* v. *California Superior Court*, [436 U.S.] at 92, 56 L.Ed.2d 132, 98 S.Ct. 1690, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, c.f. *Shaffer* v. *Heitner*, 433 U.S.

> 186, 211, n. 37, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko* v. *California Superior Court*, supra, at 93, 98, 56 L.Ed.2d 132, 98 S.Ct. 1690.

Worldwide Volkswagen Corp. v. *Woodson*, 444 U.S. at 291. Therefore, our inquiry can go beyond the substantial contacts which Helicol maintains in Texas, and we may also look to this State's interest in adjudicating the dispute; and Hall's interest in effective and convenient relief.

Texas has an interest in adjudicating this dispute. Hall is not a Texas resident, but is a citizen of this country. More importantly, Hall was hired in Houston, Texas, by a Texas resident. It cannot be questioned that this forum has an interest in protecting the employees of its "residents" (Williams-Sedco-Horn). This is especially necessary in light of the fact that Texas is the headquarters of countless international companies, and as a member of the "interstate judicial system," this State has an interest in obtaining the most efficient resolution of controversies and in furthering fundamental substantive social policies. (See above quote, citing *Kulko* v. *California Superior Court*, supra.)

Hall has a genuine interest and desire in obtaining convenient and effective relief. The U.S. Supreme Court directly considered the plaintiff's interest involved in *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957). In *McGee*, a California resident was suing a Texas insurance company as a beneficiary under a life insurance policy. The defendant's only contact with California had been its mailing of the policy to the state, and its receipt of premium payments from the decedent. The U.S. Supreme Court addressed the relative convenience of the parties and based their decision allowing maintenance of the suit in California on the State's interest in providing effective redress, and the fact that an individual claimant could not overcome the difficulties of maintaining an action in a foreign forum ". . . thus in effect making the company judgment

proof." 355 U.S. at 223. The Court did recognize the inconvenience that this worked on the defendant, but based on the contacts of the defendant, due process would not be offended. Admittedly this cause does not fall precisely within the facts of *McGee*, it does fall within its spirit.

Based on the considerations of the above discussion and looking to the requirements of the *U-Anchor* test, we find that Helicol's numerous and substantial contacts do constitute "doing business" in this State and the trial court's actions do not offend due process.

The judgment of the court of civil appeals is reversed and the judgment of the trial court is affirmed.

JAMES P. WALLACE
Justice

Concurring opinion by Justice Campbell in which Justice McGee joins. Dissenting opinion by Justice Pope in which Chief Justice Greenhill and Justice Barrow join.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

No. C-243

ELIZABETH HALL, *et al.*,

Petitioners,

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Respondent.

FROM HARRIS COUNTY FIRST DISTRICT

ON MOTION FOR REHEARING
CONCURRING OPINION

I concur with the result of the opinion by Justice Wallace for these additional reasons.

The issue in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), was "whether, consistently with the due process clause of the Fourteenth Amendment, an Oklahoma court may exercise in personam jurisdiction over a non-resident automobile retailer and its wholesale distributor in a products liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an automobile accident in Oklahoma." *Id.* at 287. The question before this Court is whether, consistently with the due process clause of the Fourteenth Amendment, a Texas court may exercise in personam jurisdiction over a non-resident provider of helicopter services, when the defendant's connections with Texas were all of those listed in the opinion by Justice Wallace.

In *World-Wide*, there was no evidence that World-Wide or its retail distributor, Seaway, did any business in Oklahoma, shipped or sold any products to or in that state, had an agent to receive process there, or purchased advertisements in any

media calculated to reach Oklahoma. During oral arguments before the U.S. Supreme Court, plaintiff's attorney conceded there was no showing that any automobile ever sold by World-Wide or Seaway had ever entered Oklahoma with the single exception of the car involved. *Id.* at 289. Thus, *World-Wide* holds that driving a car through a state is not such "minimum contacts" to give that state jurisdiction in an action against a New York seller.

In reaching this decision, the U.S. Supreme Court stated:

> Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the state. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

444 U.S. at 295.

Applying that same language to the facts of this case, I would write: Helicol carries on much business in Texas. They close many purchases of helicopters and spare parts and negotiate contracts in Texas. They regularly secure the services of Bell Helicopter in training their pilots and repair technicians. They solicited business in Texas by sending a representative to Houston to negotiate with Williams-Sedco-Horn. The record shows they regularly buy helicopters and spare parts in Texas and seek Texas services for training their employees. They directly secure the services of the Texas markets, maintain employees in Texas on a year-round basis and 26 times sent officials of their company to Texas. This activity has continued since 1970. In this multi-million dollar business in Texas, Heli-

col has availed itself of the privileges and benefits of Texas law. In short, our petitioners seek to base jurisdiction on many significant contacts in Texas that reflect a continuous general presence in Texas.

The U.S. Supreme Court, in *World-Wide*, was addressing the jurisdictional problem between states. However, we do not have the same problem as *World-Wide*. We do not have a dispute over jurisdiction between coequal sovereigns in a federal system. We are deciding jurisdiction between countries; as to citizens of the United States and a resident of Colombia. Therefore, our "due process" application must be broader in scope.[1]

Now, let us look at what *World-Wide* said about "minimum contacts" and reasonableness of the "forum" among the states, and apply those tests to our facts:

> The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their statutes as coequal sovereigns in a federal system.
>
> The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice.' " International Shoe Co. v. Washington, [326 U.S.] at 316, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057,

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[1] On September 17, 1982, after Helicol's motion for rehearing was filed, the Clerk of the Court advised West Publishing Company by letter that the language: "Therefore, our 'due process' application must be broader in scope" was removed from the opinion and the following language was substituted: "Therefore 'due process' in this case must be universal in its application."

> quoting Miliken v. Meyer, 311 U.S. 457, 463, 85 L. Ed. 278, 61 S. Ct. 339, 132 A.L.R. 1357 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U.S. at 317, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see McGee v. International Life Ins. Co. 355 U.S. 220, 223, 2 L. Ed. 2d 223, 78 S. Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see Kulko v. California Superior Court, [436 U.S.] at 92, 56 L. Ed. 2d 132, 98 S. Ct. 1690, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. Shaffer v. Heitner, 433 U.S. 186, 211, n. 37, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see Kulko v. California Superior Court, [436 U.S.] at 93, 98, 56 L. Ed. 2d 132, 98 S. Ct. 1690.

444 U.S. at 291-92.

The contacts of Helicol in Texas were not "minimal," they were "substantial." It is not unreasonable to require a company with the expertise in international business, as Helicol, to defend a suit in a state where it has conducted multi-million dollars of business. However, it is unreasonable to require the widows and children seeking relief here to go to a foreign country to prosecute their action.

This Court has an interest in adjudicating the dispute of these United States citizens. They do not have the power to select another state but must be removed to a foreign country. This Court has an interest in assuring these plaintiffs obtain convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum country.

"Due process" is not a rigid, unchanging rule that courts could always determine by an unchanging formula. The concept of "due process" is designed to meet the test of change and to protect the rights of American citizens in the 1980's, as it did when the Constitution was written. In *World-Wide*, it was stated:

> The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in McGee v. International Life Ins. Co., supra, at 222-223, 2 L. Ed. 2d 223, 78 S. Ct. 199, this trend is largely attributable to a fundamental transformation in the American economy:
>
> "Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."
>
> The historical developments noted in McGee, of course, have only accelerated in the generation since that case was decided.

444 U.S. at 292-93.

The quote from *McGee* is as applicable to the facts of this case as it was to the *McGee* facts. It could be written: Today many commercial transactions touch two or more countries and may involve parties separated by continents or oceans. With this increasing internationalization of commerce has come a great increase in the amount of business conducted by mail and satellite communications across continental lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a country where he engages in economic activity.

The *McGee* court further stated: "Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing

which amounts to a denial of due process." 355 U.S. at 224. In my opinion, the inconvenience to Helicol, considering their substantial contacts in Texas, is certainly nothing which amounts to a denial of due process.

In *Hanson* v. *Denckla*, 357 U.S. 235 (1958), the Supreme Court, in explaining the requirements of due process, stated:

> The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but *it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.*
> [Emphasis added].

357 U.S. at 253.

This Court, in *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760 (Tex. 1977), tested the jurisdiction of Texas courts over the Oklahoma resident by stating:

> [T]he contacts of Burt with Texas are minimal and fortuitous, and he cannot be said to have "purposefully" conducted activities within the State. Burt's contacts with Texas were not grounded on any expectation or necessity of invoking the benefits and protections of Texas law, nor were they designed to result in profit from a business transaction undertaken in Texas. The contract was solicited, negotiated, and consummated in Oklahoma, and Burt did nothing to indicate or to support an inference of any purpose to exercise the privilege of doing business in Texas. Simply stated, Burt was a passive customer of a Texas corporation who neither sought, initiated, nor profited from his single and fortuitous contact with Texas.

553 S.W.2d at 763.

Applying the *U-Anchor* test and using the U-Anchor language, I find Helicol's contacts are numerous and not fortuitous, as Helicol purposefully conducted activities within the state. Helicol's contacts with Texas were grounded on the

expectation, or necessity, of invoking the benefits and protections of Texas law; and they were designed to result in profit from a business transaction undertaken in Texas. The contracts and contacts were solicited or negotiated in Texas and some consummated in Texas. Helicol's activities, therefore, did more than indicate or support an inference of purposefully exercising the privilege of doing business in Texas. Helicol was an active customer of Texas corporations and companies who sought, initiated, and hopefully profited from its many and purposeful contacts with Texas.

ROBERT M. CAMPBELL
Justice

Justice McGee joins in this concurring opinion.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

No. C-243

ELIZABETH HALL, *et al.*,

Petitioners,

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Respondent.

FROM HARRIS COUNTY, FIRST DISTRICT

DISSENTING OPINION

I respectfully dissent. Jurisdiction was originally exercised in this case over Helicol, a nonresident defendant, on a cause of action that arose in South America. The suit was brought by Hall and others, all residents of states other than Texas. In our original opinion, we held that the exercise of jurisdiction over Helicol was improper and violated the requirements of due process. Significant in that holding was the fact that the underlying cause of action, concerning the crash of a helicopter in Peru, was unrelated to Helicol's contacts with Texas. We concluded that, absent a showing of the defendant's "general business presence" in this state, created by "substantial and continuous activity," jurisdiction based upon contacts unrelated to the cause of action was unconstitutional.

For reasons expressed in our original opinion, and for additional reasons that have become clear on rehearing, I remain convinced that jurisdiction should not be exercised in this case, and that the original opinion should be retained as the opinion of this court. That opinion was at least an attempt to define standards clarifying the vague and uncertain statutory and constitutional boundaries of *in personam* jurisdiction. The rehearing opinion, on the other hand, ignores the need for

standards, and will very likely enhance rather than alleviate the confusion surrounding this difficult area of the law.

Article 2031b and Unrelated Contacts

In our earlier opinion, we stated that article 2031b, the Texas "long-arm" statute, reaches to the full extent permitted by the Constitution, authorizing the exercise of jurisdiction over a nonresident defendant whenever doing so is consistent with due process. We were concerned with avoiding technical distinctions as to what is and what is not "doing business." We concluded that the "catch-all" language in the statute—"without including other acts that may constitute doing business"—extended coverage of the term essentially to all activity a nonresident might perform in the state, and that the only remaining determination in jurisdiction cases should be whether asserting jurisdiction is constitutional. While it still seems correct to say that the term "doing business" should be defined broadly, reexamination on rehearing of our original analysis indicates that it is nevertheless incorrect to conclude that article 2031b reaches as far as due process permits. As explained in a series of Federal Fifth Circuit opinions beginning with *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), due process is broader than statutory boundaries of jurisdiction in Texas because the Constitution will sometimes permit a state to assert jurisdiction over a nonresident defendant who has contacts with the state unrelated to the cause of action being asserted. *See Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) (general jurisdiction based upon "substantial and continuous activity"). Article 2031b, on the other hand, expressly limits the exercise of personal jurisdiction to causes of action *arising out of* activities or business done within the state. *Prejean* v. *Sonatrach, Inc.*, *supra* at 1265. *See also Jim Fox Enterprises, Inc.* v. *Air France*, 664 F.2d 62, 63-64 (5th Cir. 1981); *Placid Investments, Ltd.* v. *Girard Trust Bank*, 662 F.2d 1176, 1178 (5th Cir. 1981). Stated differently, article 2031b requires that there always be a *nexus* between the cause of action and the contacts relied

upon to justify jurisdiction, while due process does not always demand that such a nexus be shown.

The source of the nexus requirement in Texas is the clear wording of the statute itself. Section 3 of article 2031b provides:

> Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made *upon causes of action arising out of such business done in this State*, the act or acts of engaging in such business within the State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or nonresident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings *arising out of such business done in this State*, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (emphasis added).[1] This statute determines the length that the "long

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[1] Section 2 of article 2031b also requires a nexus, although this section was not the basis for exercise of jurisdiction in the present case. Section 2 provides:

> When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party *arising out of such business*, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in

arms" of Texas jurisdiction may extend. The quoted language unambiguously confines that reach to suits arising out of contacts with the state.

Nothing in the development of article 2031b indicates that the nexus requirement should be disregarded. The statute was enacted in the wake of *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), which greatly expanded the jurisdictional potential of the various states. The Supreme Court reasoned in *International Shoe* that the exercise of jurisdiction over a nonresident defendant satisfies due process when the defendant has had "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *Id.* at 316. This standard was broader in its effect than the "long-arm" statutes then employed in most states, including Texas.[2] Most states, like Texas, responded to the action of the Supreme Court by enacting new statutes aimed at taking advantage of the expanded limits of potential jurisdiction. Yet, while the reach of a particular statute could always be coextensive with constitutional

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charge of such business shall forthwith be sent to the defendant or to the defendants [sic] principal place of business by registered mail, return receipt requested.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 2 (emphasis added).

[2] Article 2031b became effective August 10, 1959. Prior to that time, Texas had no general jurisdictional statute. Instead, jurisdiction was based upon a nonresident motorist statute, TEX. REV. CIV. STAT. ANN. art. 2039a, and upon several statutes applying to nonresidents in specific circumstances, such as TEX. INS. CODE ANN. arts. 3.65, 3.66, 21.38 § 6; TEX. BUS. CORP. ACT ANN. arts. 2.11, 8.10; TEX. NON-PROFIT CORP. ACT ANN. art. 8.09; TEX. REV. CIV. STAT. ANN. arts. 2031, 2031a, 2032, 2033, 2033b. *See* Thode, *In Personam Jurisdiction: Article 2031b, The Texas "Long Arm" Jurisdiction Statute; And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 304 n.165 (1964) [hereinafter cited as Thode].

confines outlined by the Supreme Court, states were not compelled to assert jurisdiction that far. *See Perkins* v. *Benguet Consolidated Mining Co.*, *supra* at 440; *Prejean* v. *Sonatrach, Inc.*, *supra* at 1264; Thode, *supra* at 304. Some states took advantage of the full range of jurisdiction allowed. *See, e.g.*, FLA. STAT. ANN. § 48.081(5) (allowing jurisdiction over unrelated causes of action when a foreign corporation has a "business office" in the state and engages in the transaction of business there); WIS. STAT. ANN. § 801.05(1) (jurisdiction over unrelated causes of action permitted when an individual carries on "substantial and not isolated activities" in the state). *See also* UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02 (jurisdiction may be asserted as to unrelated causes of action when a defendant has his principal place of business in the state). Others wrote more restrictive statutes. Texas included the requirement that the jurisdiction be limited to causes of action arising from local activity.[3]

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[3] The nexus requirement of article 2031b was contained in the original version of the act and has remained there unchanged since enactment. Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 747 (1976). The statute is thought to have been adapted from the 1947 Vermont "long-arm" statute, which also contains a nexus requirement. The pertinent portion of that statute provides:

> If a foreign corporation makes a contract with a resident of Vermont to be performed in whole or in part by either party in Vermont, or if such foreign corporation commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed to be doing business in Vermont . . . and shall be deemed equivalent to the appointment . . . of the secretary of state of Vermont . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings . . . *arising from or growing out of such contract or tort* . . .

VT. STAT. ANN. title 12, § 855, *quoted in* Thode, *supra* at 305 n.167 (emphasis added). Other statutes adopted with similar provisions include: ILL. REV. STAT. ch. 110, § 17(1); MD. ANN. CODE,

Jurisdiction statutes stand as expressions of a state's interest, and the limits of that interest, in acquiring jurisdiction over nonresident defendants.[4] In this way, article 2031b may

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Courts and Judicial Proceedings, § 6-103; N.Y. CIV. PRAC. LAW § 302; OHIO REV. CODE ANN. § 2307.382. *See also* Precision Polymers, Inc. v. Nelson, 512 P.2d 811, 813 (Okla. 1973) (construing OKLA. STAT. title 12, §§ 187, 1701.03):

> Under the above holding if it does not appear from the record that plaintiff's cause of action arises out of or is based upon the same acts of defendant alleged to confer jurisdiction in personam of the defendant, plaintiff may not invoke the provisions of § 187, supra, to acquire jurisdiction of defendant. This holding is in harmony with the language of § 187, which limits its application "to any cause of action arising, or which shall have arisen, from doing any" of the acts therein enumerated.

The Oklahoma statute requires a nexus notwithstanding the fact that the act has been construed to extend to constitutional limits. *See* Roberts v. Jack Richards Aircraft Co., 536 P.2d 353, 355 (Okla. 1975).

[4] The United States Supreme Court has frequently looked to jurisdiction statutes to determine the extent of a state's expressed interest in acquiring jurisdiction over a particular lawsuit. In Hanson v. Denckla, 357 U.S. 235, 252 (1958), the Court distinguished the previous case of McGee v. International Life Insurance Co., 355 U.S. 220 (1957), by stating:

> This case is . . . different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers Health Assn.* v. *Virginia*, 339 U.S. 643, 647-49; *Doherty & Co.* v. *Goodman*, 294 U.S. 623, 627; *Hess* v. *Pawloski*, 274 U.S. 352.

See also Kulko v. California Superior Court, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by, *e.g.*, enacting a special jurisdictional statute."); Iowa Electric Light and Power Co. v. Atlas Corp., 603 F.2d 1301 (8th Cir. 1979); Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1345 (1980).

be seen as a reflection of Texas' interest, as expressed by the legislature, in assuming jurisdiction over suits arising out of acts done in this state.[5] A desire to gain jurisdiction over nonresidents for *unrelated* actions arising from activities outside the state is not reflected in the history of the statute or in the act's clear and unambiguous wording. Certainly, the legislature could have drafted the statute in language expressly extending its effect to the full extent permitted by the Constitution, as it did in TEX. FAM. CODE ANN. § 3.26 (permitting the exercise of jurisdiction over a nonresident respondent "if there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction"), or it could have simply left out in the nexus requirement, as in TEX. BUS. CORP. ACT ANN. art. 8.10 (providing for service of process on foreign corporations authorized to transact business in the state). Absent such legislative action, however, we must enforce the clear provisions of article 2031b as presently written. *See generally Fox* v. *Burgess*, 157 Tex. 292, 297, 302 S.W.2d 405, 409 (1957); 2A

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[5] This is another way of saying that the legislature has expressed an interest in providing a forum for state residents who are injured by activities of nonresidents performed within the state's boundaries, and to require that the nonresident bear the costs of injuries caused by their activities in the state. That these considerations were factors in the drafting of the provisions of article 2031b is reflected indirectly in one commentator's call for legislative action prior to the enactment of the statute. *See* Wilson, *In Personam Jurisdiction Over Non-Residents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363 (1957). The proposed draft of a statute included by Professor Wilson in his article contained a nexus requirement identical to the one found in article 2031b. This proposed draft is considered by some to have served as a model for the first five sections of the statute adopted by the legislature. Thode, *supra* at 303 n.151.

SUTHERLAND ON STATUTORY CONSTRUCTION § 46.04 (4th ed. 1973).[5]

Those who insist that the nexus requirement in article 2031b should be ignored rely upon *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760 (Tex. 1977), *cert. denied*, 434 U.S. 1063 (1978), as authority for the idea that the statute should extend to "constitutional limits." This court used that broad language in its opinion in *U-Anchor*, but it is evident from the facts and context of that case that the defendant's contacts with Texas formed the very basis for the cause of action sued upon. Therefore, the nexus requirement was satisfied and the court did not need to deal with that issue. Instead, the court examined the statutory definition of "doing business" located in section 4 of

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[5] It has been contended that the statute, article 2031b, was originally enacted to extend Texas "long-arm" jurisdiction to the full limits allowed after *International Shoe*, and that, if constitutional limits were actually broader than the legislature then believed, or if those limits have since been expanded, the statute's scope should likewise be enlarged in order to reach to the maximum extent possible. This argument is defective, however, for several reasons. First, article 2031b was enacted *after* Perkins v. Benguet Consolidated Mining Co., *supra*, which very clearly stated that states could, in certain instances, exercise jurisdiction over unrelated causes of action. 342 U.S. at 445-47. Second, even assuming that article 2031b was initially intended to be coextensive with due process, and due process was at that time believed to always require a nexus, we cannot assume that the drafters would have extended the statute to constitutional limits had the true limits been known, or when the limits were expanded. Perhaps the legislature was willing to extend article 2031b to constitutional limits only so long as a nexus was required. Finally, statutes drafted and enacted in other states near the time that article 2031b was written contained provisions authorizing the exercise of jurisdiction over unrelated causes of action in some cases, indicating that at least some legislatures had the idea that such an exercise of jurisdiction was constitutional. *See, e.g.*, MD. ANN. CODE, Courts and Judicial Proceedings, § 6-102; WIS. STAT. ANN. § 801.05(1).

the act and, relying upon the "catchall" language of that section, construed the term "doing business" as broadly as the constitution would permit.[7] In a sense, therefore, the court did extend the statute to constitutional limits by substituting the constitutional "minimum contacts" standard for the more restrictive "tort or contract" definition of "doing business." In other words, the inquiry in jurisdiction cases after *U-Anchor* became whether a defendant had had "minimum contacts" with this state, rather than whether he had committed a tort or entered into a contract here. While this construction expanded the scope of the statute to constitutional limits in the sense of section 4, however, it can in no way be seen to have affected the requirement in sections 2 and 3 that the cause of action "arise out of" the contacts with the forum.

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[7] The idea that article 2031b should "extend to constitutional limits" seems to have been lifted by the court from the comments of Professor Thode, *supra*. Like the court in *U-Anchor*, Thode spoke of expanding the statute in the context of defining "doing business." He stated: "[T]he specific language pertaining to contracts and torts is sufficiently broad to encompass all constitutionally permissible suits in these two areas of the law." *Id.* at 307. Concerning the "catchall" phrase used by the court in *U-Anchor* to accomplish the broadening of article 2031b to constitutional limits, Thode remarked:

> Does article 2031b provide for jurisdiction in the many areas of law other than tort or contract wherein a lawsuit could arise against a nonresident defendant? The answer lies in the fact that section 4 also includes a catch-all clause. . . . The wording [of the clause] is ambiguous, but the other purpose is clear. The words "without including other acts that may constitute doing business" could be construed to mean that no other acts are to be included within the jurisdictional reach of article 2031b. But the obvious meaning, and the one consistent with the whole purpose of the act, is that this catchall language is intended to expand the jurisdictional scope of the statute to constitutional limits "without including other acts" in the specific description of acts that fall within the purview of the article 2031b.

Id. at 307-08.

It is well established that the threshold inquiry in any *in personam* jurisdiction case is whether statutory requirements have been met. Only if the exercise of jurisdiction in a given instance is within the scope of statutory authority is the constitutionality of that exercise ever at issue. *Prejean* v. *Sonatrach, Inc., supra* at 1264; *Oswalt* v. *Scripto, Inc.*, 616 F.2d 191, 196 (5th Cir. 1980); *Pizza Inn, Inc. v. Lumar*, 513 S.W.2d 251, 253 (Tex. Civ. App.—Eastland 1974, writ ref'd n.r.e.). The exercise of jurisdiction over Helicol in this tort action was *beyond* the scope of authority defined by article 2031b. The tort sued upon did not occur in Texas; it occurred in South America, and arose purely out of Helicol's transacting business there. Helicol has had contacts with Texas, but there has been no allegation or proof that the purchase of helicopters in Fort Worth or the negotiation of a contract in Houston in any way caused the crash in Peru. Put simply, the contacts of Helicol with Texas did not give rise to the cause of action being asserted, and the nexus requirement contained in article 2031b has not been met. Absent this statutory authorization, jurisdiction may not be asserted.

The statement that jurisdiction may not be exercised over Helicol because the cause of action is not related to the forum contacts is true *regardless* of the extent or quality of Helicol's unrelated contacts. In *Prejean* v. *Sonatrach, Inc., supra*, one defendant, Beech, had extensive contacts with Texas, all unrelated to the cause of action. These contacts were remarkably similar to Helicol's activities in Texas, but were much more extensive. For example, Beech entered into an $11.1 million subcontract with Bell Helicopter in Fort Worth for the production of airframe assemblies, and had produced these for Bell continuously since 1967 under contracts exceeding $72 million. *Id.* at 1270 n.19. In addition, Beech had two employees residing and conducting business in Texas. A local corporation wholly owned by the defendant had sold and serviced aircraft manufactured by Beech. Notwithstanding these contacts, which quite obviously constituted "doing business" in Texas, the court concluded that jurisdiction could not be asserted

because the activities were not shown to have the "slightest causal relationship with the decedent's wrongful death." *Id.* t 1270.

In *Jim Fox Enterprises, Inc.* v. *Air France*, 664 F.2d 63 (5th Cir. 1981), the defendant, Air France, was doing "a thriving business in Texas." *Id.* at 65. It had a ticket office at Houston's Intercontinental Airport and a district sales office downtown. It listed six local telephone numbers in the Houston telephone directory, leased Texas real estate, employed Texas residents, and paid Texas employment and personal property taxes. Gross receipts from passenger ticket sales in Texas totalled in excess of $59 million. Nevertheless, the court in *Jim Fox* recognized that article 2031b requires a nexus between the cause of action and the contacts with Texas, and that Air France's contacts, being unrelated to the cause of action, were insufficient to support jurisdiction.

In another case, *Placid Investments, Ltd.* v. *Girard Trust Bank*, 662 F.2d 1176 (5th Cir. 1981), it was undisputed that the defendant did business in Texas. As noted by the court, the defendant maintained bank accounts in Texas, owned Texas real estate, and received revenue from Texas sources. *Id.* at 1178. None of these contacts, however, "gave rise" to the cause of action. As a result, the court concluded, the causal relationship or nexus requirement in article 2031b was not met, and jurisdiction could not be asserted.

Put simply, the boundaries of jurisdiction authorized by article 2031b are more restrictive than those defind by due process. If the state has an interest in asserting jurisdiction over suits unrelated to activity performed in the state, the legislature should act to extend the reach of the statute. Until the legislature does act, however, we must enforce the clear provisions of the present statute. Enforcement of that statute in the present case yields the result that Helicol was not subject to the jurisdiction of this state on the asserted cause of action. I would, therefore, affirm the judgment of the court of civil appeals, as this court did in the first opinion.

Due Process

Because I believe that the requirements of article 2031b were not met in this case, I would not reach the constitutional question. Even if article 2031b authorized the exercise of jurisdiction, however, I would still conclude, as the court concluded in its original opinion, that the exercise of jurisdiction over Helicol exceeded the limits imposed by due process.

As stated in the initial discussion, the Constitution will sometimes permit a state to exercise jurisdiction over a nonresident defendant for causes of action *unrelated* to the defendant's contacts with the forum. To state this fact, however, is to state the exception and not the rule. Generally, a defendant's contacts with the forum state will only support the power to adjudicate with respect to issues arising from the very controversy sued upon. *L. D. Reeder Contractors* v. *Higgins Industries*, 265 F.2d 768, 773-75 (9th Cir. 1959); von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) (hereinafter cited as von Mehren & Trautman); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35(1) (1971). Only when the defendant has established a general business presence in the state, characterized by "substantial and continuous activity," may the state assume jurisdiction over the defendant for unrelated causes of action. *Perkins* v. *Benguet Consolidated Mining Co.*, *supra* at 438, 445, 448; *O'Neal* v. *Hicks Brokerage Co.*, 537 F.2d 1266, 1268 (4th Cir. 1976); *Seymour* v. *Parke, Davis & Co.*, 423 F.2d 584, 585-86 (1st Cir. 1970); *W. H. Elliott & Sons Co.* v. *Nuodex Products Co.*, 243 F.2d 116, 122 (1st Cir.), *cert. denied*, 355 U.S. 823 (1957). *See also* R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 145 (2d ed. 1980); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35(3) (1971).*

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*The reason for placing emphasis upon contacts related to the cause of action has to do with the need to show a state interest in

The term "substantial and continuous activity" has a distinct meaning when used in the context of due process analysis. It suggests that the individual or corporate defendant is enough

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assuming jurisdiction over the nonresident defendant. As explained in Curtis Publishing Co. v. Birdsong, 360 F.2d 344, 346-47 (5th Cir. 1966): "There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives that State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum."

The United States Supreme Court had made it clear that a state's interest in subjecting a nonresident to its judicial jurisdiction is a fundamental factor to be considered in cases of this kind. In *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the interest of the state was obvious in that the suit was brought by the state itself, for unpaid taxes. In McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957), the validity of the exercise turned upon California's paramount interest in the litigation. The Court noted the state's manifest interest in protecting its residents, stating: "These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State." In Hanson v. Denckla, 357 U.S. 235, 251-52 (1958), the Court emphasized the *absence* of a substantial state interest, distinguishing *McGee*. The Court explained:

> The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee International Life Ins. Co.*, 355 U.S. 220, and the cases there cited. In *McGee*, the nonresident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.

Contrary to this court's conclusion on rehearing that Texas has an interest in adjudicating this case because the plaintiffs are United

of an "insider" in the forum that he may be safely relegated to the state's political processes. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 87 (1980). Achievement of such a position obviously requires more of the defendant than "minimum contacts." Instead, the defendant must establish some close substantial connection with the state approaching the relationship between the state and its own residents.[9] It was upon such a basis—the defendant's operating temporary corporate headquarters in the forum state—that the Supreme Court upheld the exercise of jurisdiction over an unrelated

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States citizens, cases demonstrate that state interest in litigation is consistently derived from a state's desire to protect its own citizens and property and to effectuate its own regulatory policies. *See, e.g.*, Blount v. Peerless Chemicals, Inc., 316 F.2d 695, 697 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963); Compania de Astral v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). *See also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp.* v. *Woodson*, 80 COLUM. L. REV. 1343, 1345 (1980).

[9] This relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principal place of business for the defendant. *See* Seymour v. Parke, Davis & Co., *supra* at 587: "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have no question of the right of the state to subject the defendant to suit for unconnected causes of action." *See also* Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960 (1981); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35, comment e (1971): "The individual's activities in the State may . . . be so continuous and substantial as to justify the exercise of judicial jurisdiction over him as to causes of action arising from activities in other states. This is particularly likely to be true in a situation where the individual's principal place of business is in the State."

cause of action in *Perkins* v. *Benguet Consolidated Mining Co., supra.*[10]

This court, on rehearing of the present case, would consider the nexus between the cause of action and the forum contacts a necessary requirement only in cases involving "single or few" contacts with the forum state. The court remarks that a nexus is "unnecessary when the nonresident defendant's presence in the forum through numerous contacts is of such nature, as in this case, so as to satisfy the demands of the ultimate test of due process." The "ultimate test of due process" then applied by the court is the "minimum contacts" standard. The error in this reasoning is that the nexus requirement is satisfied and becomes unnecessary not upon a showing of "minimum contacts," but upon a demonstration of the defendant's *substantial* and *continuous* activity in the forum. Absent a showing of such activity, the nexus requirement becomes a highly significant factor. Given the additional fact that the forum has no other basis for establishing its interest in the lawsuit, such as by residence of the plaintiff, *see Ratliff* v. *Cooper Laboratories, Inc.*, 444 F.2d

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[10] As stated in von Mehren & Trautman, *supra* at 1144:

> Given the facts of the case, the [*Perkins*] decision can be regarded as approving the forum utilized as a surrogate for the place of incorporation or head office. Against the backdrop of increasingly refined thinking about specific jurisdiction to adjudicate, and despite the Ohio court's language on remand, the *Perkins* case should be regarded as a decision on its exceptional facts, not as a significant reaffirmation of obsolescing notions of general jurisdiction.

See also Seymour v. Parke, Davis & Co., *supra* at 587 (limiting *Perkins* to its facts); Newton, *Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980) ("The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.")

745 (4th Cir. 1971), the nexus requirement becomes controlling. No state should assume jurisdiction over a case involving a nonresident plaintiff and defendant when the cause of action arises out of facts totally unrelated to the forum state.

A separate concurrence filed on rehearing contends that the "long-arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due process than United States citizens, *cf. Plyler* v. *Doe*, 50 U.S.L.W. 4650 (1982); *Truax* v. *Raich*, 239 U.S. 33 (1915), it is nevertheless inconsistent with the way due process has been applied in previous cases. Although such a contention is rarely raised, cases dealing with jurisdictional issues invariably apply the same due process standards to citizens and noncitizens alike. *See, e.g., Jim Fox Enterprises* v. *Air France*, 664 F.2d 63 (5th Cir. 1981); *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson* v. *Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978); *Honeywell, Inc.* v. *Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc.* v. *Cousteau*, 495 F.2d 483 (5th Cir. 1974); *Bryant* v. *Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439 (1965). *See also* A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW vol. II at 22 (1973) (neither party's citizenship affects an American court's jurisdiction).

Except for the purchase of helicopters and spare parts and the negotiation of a single contract to be performed in South America, Helicol conducted all of its business *outside* of the State of Texas. Nevertheless, the court has concluded that Helicol is subject to the jurisdiction of Texas courts for suits arising anywhere in the world. As a result, the court has established Texas as a "magnet" forum, drawing to its courts the trial of any lawsuit involving a defendant who has ever done business in Texas. Texas is now the courthouse for the world. I must conclude that this result is not only inconsistent with constitutional standards established in previous cases, but is

detrimental to the "fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *International Shoe Co.* v. *Washington, supra* at 39.

JACK POPE
Justice

Chief Justice Greenhill and Justice Barrow join in this dissent.

OPINION DELIVERED:

July 21, 1982

IN THE SUPREME COURT OF TEXAS

No. C-243

ELIZABETH HALL, *et al.*,

Petitioners,

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Respondent.

FROM HARRIS COUNTY, FIRST DISTRICT

DISSENTING OPINION

I respectfully dissent. The former dissenting opinion handed down July 21, 1982, is withdrawn. The survivors of four nonresidents who were killed in an airplane crash in the jungles of Peru, have sued the defendant Helicol in Houston, Texas. Helicol is a resident corporation of Colombia, South America. Neither the plaintiffs, the decedents, the defendant, nor the tort action have any connection with Texas. The court makes Texas the courthouse for the world, requiring only that the plaintiff show that the defendant had made purchases of supplies from some unrelated business located in Texas. I disagree with the court's opinion, because it is not grounded upon the correct facts and because our long-arm statute reaches only to "causes of action arising out of such business done in this State." TEX. REV. CIV. STAT. ANN. art. 2031b.

The court mistakenly says that Williams-Sedco-Horn, a Texas joint venture, was the party that contracted with the Peruvian owned oil company, Petro Peru. The opinion also says that the defendant Helicol negotiated and made its agreement with Williams-Sedco-Horn in Houston, Texas. The true facts, as stated by the court of civil appeals are that Williams-Sedco-Horn was not the party who contracted either with the

Peruvian oil company or with Helicol. The undisputed testimony was that Peru forbade a contract to construct the pipeline with any corporation unless it was a Peruvian company. The contract, written in Spanish and approved by the government, was with Peruvian-based Consorcio, not Williams-Sedco-Horn. The parties to the contract for the helicopters were Consorcio and Helicol. The court of civil appeals so found and enforced that finding by its further reference to paragraph 19 of the contract, which states, in the words of that court, "that all parties agree that Lima, Peru, is the residence for all related to the contract and that the parties submitted to the jurisdiction of Peru." The court of civil appeals made these other significant findings:

> It [Helicol] does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc.* v. *Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Article 2031b Requires a Nexus to Business Done in This State.

Article 2031b expressly requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction. The nexus requirement in Texas is found in the clear wording of the statute itself. Section 3 of article 2031b provides:

> Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made *upon causes of action arising out of such business done in this State*, the act or acts of engag-

> ing in such business within the State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or nonresident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings *arising out of such business done in this State*, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to to made a party.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (emphasis added).[1]

Article 2031b was enacted in the wake of *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), which greatly expanded the jurisdictional potential of the various states. The Supreme Court reasoned in *International Shoe* that the exercise of jurisdiction over a nonresident defendant satisfies due process when the defendant has had "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *Id.* at 316. This standard was broader in its effect than the "long-

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[1] Section 2 of article 2031b also requires a nexus, although this section was not the basis for exercise of jurisdiction in the present case. Section 2 provides:

> When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party *arising out of such business*, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants [sic] principal place of business by registered mail, return receipt requested.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 2 (emphasis added).

arm" statutes then employed in most states, including Texas.[2] Most states, like Texas, responded to the action of the Supreme Court by enacting statutes aimed at taking advantage of the expanded limits of potential jurisdiction. While the reach of a particular statute could always be coextensive with constitutional confines outlined by the Supreme Court, states were not compelled to assert jurisdiction that far. *See Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 440 (1952); *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260, 1264 (5th Cir. 1981). Some states took advantage of the full range of jurisdiction allowed. *See, e.g.*, FLA. STAT. ANN. § 48.081(5) (allowing jurisdiction over unrelated causes of action when a foreign corporation has a "business office" in the state and engages in the transaction of business there); WIS. STAT. ANN. § 801.05(1) (jurisdiction over unrelated causes of action permitted when an individual carries on "substantial and not isolated activities" in the state). *See also* UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02 (jurisdiction may be asserted as to unrelated causes of action when a defendant has his principal place of business in the state). Texas and other states wrote more restrictive stat-

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[2] Article 2031b became effective August 10, 1959. Prior to that time, Texas had no general jurisdictional statute. Instead, jurisdiction was based upon a nonresident motorist statute, TEX. REV. CIV. STAT. ANN. art. 2039a, and upon several statutes applying to nonresidents in specific circumstances, such as TEX. INS. CODE ANN. arts. 3.65, 3.66, 21.38 § 6; TEX. BUS. CORP. ACT ANN. arts. 2.11, 8.10; TEX. NON-PROFIT CORP. ACT ANN. art. 8.09; TEX. REV. CIV. STAT. ANN. arts. 2031, 2031a, 2032, 2033, 2033b. *See* Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long Arm" Jurisdiction Statute; And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 304 n.165 (1964) [hereinafter cited as Thode].

utes. Texas included the requirement that the jurisdiction be limited to causes of action arising from local activity.[3]

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[3] The nexus requirement of article 2031b was contained in the original version of the act and has remained there unchanged since enactment. Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 747 (1976). The statute is thought to have been adapted from the 1947 Vermont "long-arm" statute, which also contains a nexus requirement. The pertinent portion of that statute provides:

> If a foreign corporation makes a contract with a resident of Vermont to be performed in whole or in part by either party in Vermont, or if such foreign corporation commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed to be doing business in Vermont . . . and shall be deemed equivalent to the appointment . . . of the secretary of state of Vermont . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings . . . *arising from or growing out of such contract or tort* . . . .

VT. STAT. ANN. title 12, § 855, *quoted in* Thode, *supra* at 305 n.167 (emphasis added). Other statutes adopted with similar provisions include: ILL. REV. STAT. ch. 110, § 17(1); MD. ANN. CODE, Courts and Judicial Proceedings, § 6-103; N.Y. CIV. PRAC. LAW § 302; OHIO REV. CODE ANN. § 2307.382. *See also* Precision Polymers, Inc. v. Nelson, 512 P.2d 811, 813 (Okla. 1973) (construing OKLA. STAT. title 12, §§ 187, 1701.03):

> Under the above holding if it does not appear from the record that plaintiff's cause of action arises out of or is based upon the same acts of defendant alleged to confer jurisdiction in personam of the defendant, plaintiff may not invoke the provisions of § 187, supra, to acquire jurisdiction of defendant. This holding is in harmony with the language of § 187, which limits its application "to any cause of action arising, or which shall have arisen, from doing any" of the acts therein enumerated.

The Oklahoma statute requires a nexus notwithstanding the fact that the act has been construed to extend to constitutional limits. *See* Roberts v. Jack Richards Aircraft Co., 536 P.2d 353, 355 (Okla. 1975).

Jurisdiction statutes express the limits of a state's interest, in acquiring jurisdiction over nonresident defendants.[4] Article 2031b limits Texas' interest, to suits arising out of acts done in this state.[5] A desire to gain jurisdiction over nonresidents for

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[4] The United States Supreme Court has frequently looked to jurisdiction statutes to determine the extent of a state's expressed interest in acquiring jurisdiction over a particular lawsuit. In Hanson v. Denckla, 357 U.S. 235, 252 (1958), the Court distinguished the previous case of McGee v. International Life Insurance Co., 355 U.S. 220 (1957), by stating:

> This case is . . . different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers Health Assn.* v. *Virginia*, 339 U.S. 643, 647-49; *Doherty & Co.* v. *Goodman*, 294 U.S. 623, 627; *Hess* v. *Pawloski*, 274 U.S. 352.

See also Kulko v. California Superior Court, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by, *e.g.*, enacting a special jurisdictional statute."); Iowa Electric Light and Power Co. v. Atlas Corp., 603 F.2d 1301 (8th Cir. 1979); Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1345 (1980).

[5] This is another way of saying that the legislature has expressed an interest in providing a forum for state residents who are injured by activities of nonresidents performed within the state's boundaries, and to require that the nonresident bear the costs of injuries caused by their activities in the state. That these considerations were factors in the drafting of the provisions of article 2031b is reflected indirectly in one commentator's call for legislative action prior to the enactment of the statute. *See* Wilson, *In Personam Jurisdiction Over Non-Residents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363 (1957). The proposed draft of a statute included by Professor Wilson in his article contained a nexus requirement identical to the one found in article 2031b. This proposed draft is considered by some to have served as a model for the first five sections of the statute adopted by the legislature. Thode, *supra* at 303 n.151.

unrelated actions arising from activities outside the state is not reflected in the history of the statute or in the act's clear and unambiguous wording. Certainly, the legislature could have drafted the statute in language expressly extending its effect to the full extent permitted by the Constitution, as it did in TEX. FAM. CODE ANN. § 3.26 (permitting the exercise of jurisdiction over a nonresident respondent "if there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction"), or it could have left out the nexus requirement, as in TEX. BUS. CORP. ACT ANN. art. 8.10 (providing for service of process on foreign corporations authorized to transact business in the state). Absent such legislative action, however, we must enforce the clear provisions of article 2031b as presently written. *See generally Fox* v. *Burgess*, 157 Tex. 292, 297, 302 S.W.2d 405, 409 (1957); 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 46.04 (4th ed. 1973).[6]

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[6] It has been contended that the statute, article 2031b, was originally enacted to extend Texas "long-arm" jurisdiction to the full limits allowed after *International Shoe*, and that, if constitutional limits were actually broader than the legislature then believed, or if those limits have since been expanded, the statute's scope should likewise be enlarged in order to reach to the maximum extent possible. This argument is defective, however, for several reasons. First, article 2031b was enacted *after* Perkins v. Benguet Consolidated Mining Co., *supra*, which held that states could, in rare instances, exercise jurisdiction over unrelated causes of action. 342 U.S. at 445-47. Second, even assuming that article 2031b was initially intended to be coextensive with due process, and due process was at that time believed to always require a nexus, we cannot assume that the drafters would have extended the statute to constitutional limits had the true limits been known, or when the limits were expanded. Perhaps the legislature was willing to extend article 2031b to constitutional limits only so long as a nexus was required. Finally, statutes drafted and enacted in other states near the time that article

Two prior opinions by this court hold that the nexus was required and in both cases, it was present. In *O'Brien* v. *Lanpar Company*, 399 S.W.2d 340, 342 (Tex. 1966), we upheld an Illinois default judgment against O'Brien, a nonresident Texas corporation whose president went to Illinois and employed the plaintiff as its attorney. We then stated this three-prong requisite for jurisdiction over a nonresident:

> * * * Such would appear to be: (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

U-Anchor Advertising, Inc. v. *Burt*, 553 S.W.2d 760 (Tex. 1977), was the next time this court wrote on this subject. U-Anchor, a Texas corporation, solicited a contract with defendant Burt in Oklahoma to place advertising displays at points along Oklahoma highways. Burt agreed to pay U-Anchor $80.00 a month for 36 months and to make the payments at U-Anchor's office in Amarillo, Texas. We held that U-Anchor's cause of action against Burt satisfied the nexus required of article 2031b. We wrote that it was "connected with the contractual obligation assumed by Burt and partially performable in Texas." *Id.* at 762. We held, however, that Burt could not be sued in Texas because U-Anchor failed to satisfy

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2031b was written contained provisions authorizing the exercise of jurisdiction over unrelated causes of action in some cases, indicating that at least some legislatures had the idea that such an exercise of jurisdiction was constitutional. *See, e.g.*, MD. ANN. CODE, Courts and Judicial Proceedings, § 6-102; WIS. STAT. ANN. § 801.05(1).

the first and third requirements of *O'Brien*, *supra* at 763. As to the first requirement, we held that Burt's contacts with Texas were not purposefully conducted activities within Texas. Concerning the third requirement, we held that Burt's mailing of checks for payment to U-Anchor in Amarillo was a minimal contact. In contrast with those few contacts, we wrote that the solicitation, negotiation and consummation of the contract in Oklahoma showed that Burt might reasonably expect enforcement to be governed by Oklahoma rather than Texas law.

There is more reason here than in *U-Anchor* to deny Texas jurisdiction. The four plaintiffs worked for Consorcio. The contract fixed jurisdiction in Peru. Billings for work had to be made by Helicol to Consorcio in Peru. In *U-Anchor*, we held that Burt was no more than a passive customer of a Texas corporation, in that instance, the very party who was sued. In this case, however, Helicol has been pulled from Peru to Texas because it has been a customer of Bell Helicopter in Fort Worth. It had transactions with a company that in no way was connected with this litigation. *U-Anchor* is no support for the majority opinion.

The majority opinion disregards the statutory requirement that suit may be brought against a foreign corporation "upon causes of action arising out of such business done in this State."

The construction of article 2031b, here urged, conforms to that of the Fifth Circuit in several recent decisions. In *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), one defendant, Beech, had extensive contacts with Texas, all unrelated to the cause of action. These contacts were similar to Helicol's activities in Texas, but were much more extensive. For example, Beech entered into an $11.1 million subcontract with Bell Helicopter in Fort Worth for the production of airframe assemblies, and had produced these for Bell continuously since 1967 under contracts exceeding $72 million. *Id.* at 1270 n.19. In addition, Beech had two employees residing and conducting business in Texas. A local corporation wholly owned by the defendant had sold and serviced aircraft manufactured by

Beech. These contacts constituted "doing business" in Texas, but the court concluded that jurisdiction in Texas could not be asserted because the activities were unrelated to the cause sued upon. They did not have the "slightest causal relationship with the decedent's wrongful death." *Id.* at 1270.

In *Jim Fox Enterprises, Inc.* v. *Air France*, 664 F.2d 63 (5th Cir. 1981), the defendant, Air France, was doing "a thriving business in Texas." *Id.* at 65. It had a ticket office at Houston's Intercontinental Airport and a district sales office downtown. It listed six local telephone numbers in the Houston telephone directory, leased Texas real estate, employed Texas residents, and paid Texas employment and personal property taxes. Gross receipts from passenger ticket sales in Texas totalled in excess of $59 million. Nevertheless, the court in *Jim Fox* recognized that article 2031b requires a nexus between the cause of action and the contacts with Texas, and that Air France's contacts, being unrelated to the cause of action, were insufficent to support jurisdiction.

In another case, *Placid Investments, Ltd.* v. *Girard Trust Bank*, 662 F.2d 1176 (5th Cir. 1981), it was undisputed that the defendant did business in Texas. As noted by the court, the defendant maintained bank accounts in Texas, owned Texas real estate, and received revenue from Texas sources. *Id.* at 1178. None of these contacts, however, "gave rise" to the cause of action. As a result, the Fifth Circuit concluded, the causal relationship or nexus requirement in article 2031b was not met, and jurisdiction could not be asserted.

Due Process

When a defendant has established a general business presence in the state, characterized by "substantial and continuous activity," that state may take jurisdiction over the defendant for unrelated causes of action. *Perkins* v. *Benguet Consolidated Mining Co., supra* at 438, 445, 448; *O'Neal* v. *Hicks Brokerage Co.*, 537 F.2d 1266, 1268 (4th Cir. 1976); *Seymour* v. *Parke, Davis & Co.*, 423 F.2d 584, 585-86 (1st Cir. 1970); *W. H. Elliott & Sons Co.* v. *Nuodex Products Co.*, 243

F.2d 116, 122 (1st Cir.), *cert. denied*, 355 U.S. 823 (1957). *See also* R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 145 (2d ed. 1980); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35(3) (1971).[7]

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[7] The reason for placing emphasis upon contacts related to the cause of action has to do with the need to show a state interest in assuming jurisdiction over the nonresident defendant. As explained in Curtis Publishing Co. v. Birdsong, 360 F.2d 344, 346-47 (5th Cir. 1966): "There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives that State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum."

The United States Supreme Court had made it clear that a state's interest in subjecting a nonresident to its judicial jurisdiction is a fundamental factor to be considered in cases of this kind. In *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the interest of the state was obvious in that the suit was brought by the state itself, for unpaid taxes. In McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957), the validity of the exercise turned upon California's paramount interest in the litigation. The Court noted the state's manifest interest in protecting its residents, stating: "These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State." In Hanson v. Denckla, 357 U.S. 235, 251-52 (1958), the Court emphasized the *absence* of a substantial state interest, distinguishing *McGee*. The Court explained:

> The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee International Life Ins. Co.*, 355 U.S. 220, and the cases there cited. In *McGee*, the nonresident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.

The term "substantial and continuous activity" has a distinct meaning when used in the context of due process. It suggests that the individual or corporate defendant is enough of an "insider" in the forum that he may be safely relegated to the state's political processes. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 87 (1980). Achievement of such a position requires more of the defendant than "minimum contacts." Instead, the defendant must establish some close substantial connection with the state approaching the relationship between the state and its own residents.[8] It was upon such

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Contrary to this court's conclusion on rehearing that Texas has an interest in adjudicating this case because the plaintiffs are United States citizens, cases demonstrate that state interest in litigation is consistently derived from a state's desire to protect its own citizens and property and to effectuate its own regulatory policies. *See, e.g.*, Blount v. Peerless Chemicals, Inc., 316 F.2d 695, 697 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963); Compania de Astral v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). *See also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1343, 1345 (1980).

[8] This relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principal place of business for the defendant. *See* Seymour v. Parke, Davis & Co., *supra* at 587: "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have no question of the right of the state to subject the defendant to suit for unconnected causes of action." *See also* Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960 (1981); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35, comment e (1971): "The individual's activities in the State may . . . be so continuous and substantial as to justify the exercise of judicial jurisdiction over him as to causes of action arising from activities in other states. This is particularly likely to be true in a situation where the individual's principal place of business is in the State."

exception to the rule—the defendant's operating its corporate headquarters in the forum state—that the United States Supreme Court upheld the exercise of jurisdiction over an unrelated cause of action in *Perkins* v. *Benguet Consolidated Mining Co., supra.*[9]

The court in this case has applied the "minimum contacts" standard. The error in this reasoning is that the nexus requirement is satisfied and becomes unnecessary, not upon a showing of "minimum contacts," but upon a demonstration of the defendant's *substantial* and *continuous* activity in the forum. Absent a showing of such activity, the nexus requirement becomes a highly significant factor. Texas should not assume jurisdiction over this case that involves nonresident plaintiffs and a nonresident defendant when the cause of action arises out of facts totally unrelated to the forum state.

A separate concurring opinion filed on rehearing contends that the "long arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due process than United States citizens, *cf. Plyler* v. *Doe*, 50 U.S L.W. 4650 (1982); *Truax* v. *Raich*, 239 U.S. 33 (1915), it is nevertheless inconsistent with the way due process has been applied in previous cases. Although such a contention is rarely raised, cases dealing with jurisdictional issues invariably apply the same due process standards to citizens and noncitizens alike. *See, e.g., Jim Fox Enterprises* v. *Air France*, 664 F.2d

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[9] *See* Seymour v. Parke, Davis & Co., *supra* at 587 (limiting *Perkins* to its facts); Newton, *Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980) ("The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.")

63 (5th Cir. 1981); *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson* v. *Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978); *Honeywell, Inc.* v. *Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc.* v. *Cousteau*, 495 F.2d 483 (5th Cir. 1974); *Bryant* v. *Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439 (1965). *See also* A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW vol. II at 22 (1973) (neither party's citizenship affects an American court's jurisdiction).

The court has established Texas as a "magnet" forum, drawing to its courts the trial of any lawsuit involving a defendant who has ever made purchases in Texas.

I would affirm the court of civil appeals.

JACK POPE
Justice

Chief Justice Greenhill and Justice Barrow join in this dissent.

OPINION DELIVERED:
October 6, 1982

IN THE SUPREME COURT OF TEXAS

No. C-243

ELIZABETH HALL, *et al.*,

Petitioners,

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Respondent.

FROM HARRIS COUNTY, FIRST DISTRICT

Elizabeth Hall, along with other survivors of four Americans who were killed in a helicopter crash in the Amazon jungles of Peru, sued Helicopteros Nacionales de Colombia, S.A. Plaintiffs will hereafter be called Hall and the defendant will be called Helicol. Helicol is a corporation organized and existing under the laws of Colombia, with its principal place of business in Bogota, Colombia. Defendant Helicol, by special appearance, challenged the jurisdiction of the courts of Texas over Hall's action. TEX. R. CIV. PRO. 120a. The trial court overruled Helicol's challenge to the court's jurisdiction and, upon trial, granted judgment on a jury verdict finding that Helicol was negligent. The only points that have been preserved for this appeal are those that challenge the jurisdiction of the Texas courts. The court of civil appeals reversed the judgment of the trial court and ordered the case dismissed for lack of jurisdiction. 616 S.W.2d 247. We affirm the judgment of the court of civil appeals.

In 1974, Petro Peru, the Peruvian state owned oil company made a contract with Consorcio, a joint venture, to construct a pipeline from the jungles of Peru to the Pacific Ocean. The joint venturers were Williams International Sundamericana, Ltd., a Delaware Corporation with headquarters in Tulsa, Oklahoma; Sedco Construction Corporation, a Texas corporation; and

Horn International, Inc., a Texas corporation. The joint venture was organized for the sole purpose of performing the contract in Peru. We shall refer to the joint venture as Williams-Sedco-Horn, or as Consorcio, the term used in the Peruvian contract.

The defendant, Helicol, was not a party to that basic contract, but it had a contract with Consorcio to provide helicopter service for the workers and supplies that had to be transported to regions where there were no roads. The president of Williams, the Oklahoma member of the joint venture, had prior experience with Helicol while building pipelines in Ecuador and Peru. He called Helicol's general manager to come to Tulsa, Oklahoma, to discuss Helicol's capacity to provide the necessary equipment. Helicol's officer and the president of Williams then flew to Houston where the management committee for Williams-Sedco-Horn agreed upon the kind of equipment that was needed.

Helicol was able to supply all of the needed equipment and pilots, except for one larger helicopter that was capable of lifting heavier loads. That additional helicopter was leased by Helicol from Rocky Mountain Helicopter out of Provo, Utah.

Helicol and the joint venture consummated and signed their contract on November 11, 1974. Under the Peruvian law, the contract had to be approved by the Peruvian Air Force. The contract was prepared on official government stationery, was in the Spanish language, and was executed in Peru by Peruvian citizens who were authorized to act for each party. A Peruvian resident signed for Williams-Sedco-Horn and Helicol's Peruvian lawyer signed for that firm. The contract stated that the joint venture would be known as Consorcio and that its legal residence would be Lima, Peru. The contract provided:

> The parties, in common agreement, indicated as residence for all related to the present contract, the City of Lima and submit to the jurisdiction of the Judges and courts of Lima, Peru.

Permits to bring equipment and pilots into Peru depended upon the prior Peruvian contract. The Peruvian Air Force

made the arrangements for the permits. Consorcio, the joint venture, agreed in the contract to make its payments to Helicol's account in the Bank of America, 41 Broad Street, New York. Payments were to be made and were actually made within thrity days upon invoices from Helicol to Consorcio sent to Consorcio's offices in Lima. Helicol agreed that payments for its lease of the Rocy Mountain Helicopter would be made by the joint venture's sending to Rocky Mountain a check for ninety percent and to Helicol a check for ten percent of the invoice amount for use of the craft. Under this arrangement, the joint venture sent checks drawn on a Houston bank to Helicol either in New York or Panama City, Panama, in the approximate sum of four million dollars. The joint venture sent an additional one million dollars to Rocky Mountain on the account of Helicol as payment for the lease. No payments were made to Helicol at any Texas bank. *See generally Products Promotion, Inc.* v. *Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Those who died in the crash in 1976 were residents of Oklahoma, Illinois, Arizona and Colombia. They were not residents of Texas. They had been employed by the Houston, Texas, office of Williams-Sedco-Horn. The workers were not, of course, parties to the Helicol contract or the construction contract, both of which were Peruvian based. Helicol is not a resident of Texas. Its principal place of business is in Bogota, Colombia. Its business is that of providing helicopter service to international oil and construction companies. It has no designated agent for service of process in Texas, is not authorized to do business in Texas, owns no real or personal property in Texas, has no records, office, representative, or personnel in Texas, or in the United States, has no bank accounts in Texas, is not listed in any Texas telephone directories, and has never operated into or from Texas. It performs no helicopter operations and does not recruit employees in Texas. Ninety-four percent of Helicol's stock is owned by Avianca, the national airline of Colombia.

The contacts upon which plaintiff Hall relies to give Helicol a presence in Texas for service of process are that Helicol's

officer came to Texas to discuss its capacity to supply the helicopter service. Helicol over a period of six years purchased most of its equipment and supplies from Bell Helicopter in Fort Worth to the extent of six million dollars. The joint venture paid from its Houston bank some five million dollars. Helicol by its contract with Consorcio agreed to carry insurance measured in United States dollars, and Helicol's pilots and personnel received training in Texas. Notwithstanding this activity, however, we believe that Helicol's contacts with Texas were not sufficient to justify the exercise of jurisdiction.

A determination whether the exercise of jurisdiction over a nonresident defendant is proper normally involves a two-step inquiry: (1) whether statutory authority exists for the exercise of "long-arm" jurisdiction, and (2) whether the jurisdiction, if authorized, is consistent with the requirements of due process of law under the United States Constitution. In Texas, the primary statutory vehicle for exercising "long-arm" jurisdiction is article 2031b, TEX. REV. CIV. STAT. ANN., which provides:

> Sec. 3. Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointement by such foreign corporation, joint stock company, association, partnership, or non-resident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.
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> Doing business in state; definition
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> Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any

> foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State.

There has been some confusion concerning the scope of article 2031b. In the present case, the court of civil appeals stated: "In order to maintain jurisdiction over Helicol, it must be shown that it either committed a tort in Texas or entered into a contract to be performed in whole or in part in Texas." 616 S.W.2d at 250. Defining the scope of article 2031b in this manner, however, improperly restricts the definition of "doing business." Article 2031b specifies "making a contract" and "committing a tort," but does so "without including other acts that may constitute doing business. . . ." The catchall language expressed in this definition has been used to expand the scope of article 2031b to the full extent permitted by the Constitution, authorizing the exercise of jurisdiction over a nonresident defendant whenever doing so is consistent with due process. *See U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760, 762 (Tex. 1977); *Hoppenfeld* v. *Crook*, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.); Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long Arm" Jurisdiction Statute; and The Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 307-08 (1964). Construing the statute in this manner allows courts to avoid engaging in "technical and abstruse attempts to consistently define 'doing business,' " *U-Anchor Advertising* v. *Burt*, *supra*, and shifts the focus of the inquiry to the more important question whether the exercise of jurisdiction comports with the requirements of due process. Thode, *supra* at 307.

Focusing our attention upon due process as applied in the instant case leads us to conclude that the assertion of Texas

jurisdiction over Helicol, a foreign corporation and nonresident defendant, was not consistent with due process. As stated by the United States Supreme Court, the due process clause operates as a limitation upon the power of states to adjudicate disputes affecting the rights of nonresident defendants. *Kulko* v. *Superior Court*, 436 U.S. 84, 91, 98 S. Ct. 1690, 56 L. Ed. 132 (1978). Admittedly, the rules affecting jurisdiction over nonresidents have been extended far beyond the territorial notions established in *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L. Ed. 565 (1878). In a significant line of cases beginning with *International Shoe Co.* v. *Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), the United States Supreme Court expanded the power of states to reach beyond state boundaries in the adjudication of disputes. The general rule in such cases is the reasonableness or fairness of forcing the defendant to defend the suit in a distant forum. As stated by the Court in *International Shoe, supra* at 316:

> [D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice.

In *O'Brien* v. *Lanpar Co.*, 399 S.W.2d 340, 342 (Tex. 1966), this court construed an Illinois statute to determine whether an Illinois judgment against a defaulting Texas defendant was valid and entitled to full faith and credit. The question was whether the Illinois court had *in personam* jurisdiction over the Texas resident, and we held that it did. We quoted with approval from the decision in *Tyee Construction Co.* v. *Dulien Steel Products, Inc.*, 62 Wash. 2d 106, 381 P.2d 245, 251 (1963), in its statement of three basic factors that should coincide if jurisdiction over a nonresident corporation is to be constitutionally entertained:

> (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the

> assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

The second prong of the *O'Brien* test, that the cause of action must arise out of the contacts with the forum state, has been the topic of some controversy since the test was first adopted. Some courts and commentators see the requirement as an overly restrictive construction of the due process clause. *See, e.g., Docutel Corp.* v. *S.A. Matra*, 464 F. Supp. 1209, 1219 (N.D. Tex. 1979); Comment, *The Texas Long-arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 760 (1976). *Contra: see* Thode, *supra* at 303 n.149. The United States Fifth Circuit has been particularly inclined to find jurisdiction established by a defendant's contacts that are unrelated to the plaintiff's cause of action. *See Jetco Electronic Industries* v. *Gardiner*, 473 F.2d 1228 (5th Cir. 1973); *Eyerly Aircraft Co.* v. *Killian*, 414 F.2d 591 (5th Cir. 1969).

We recognize that a nexus between the cause of action and the defendant's contacts with the forum state is not a rigid due process requirement. It is, however, a significant factor to be considered when evaluating the fairness of the exercise of jurisdiction in a given case. A cause of action asserted against a nonresident defendant that does not arise out of something done in the forum state compels proof of more pervasive contacts with the forum than a cause of action that is connected with the defendant's activities in the state. *Cornelison* v. *Chaney*, 16 Cal. 3d 143, 127 Cal. Rptr. 352, 545 P.2d 264, 266 (1976). *See also Vencedor Manufacturing Co., Inc.* v. *Gougler Industries, Inc.*, 557 F.2d 886, 889 (1st Cir. 1977). As the relationship between the cause of action and the defendant's purposeful activity in the state grows more tenuous, the plaintiff faces an ever-increasing burden of showing contacts with the forum sufficient to justify the exercise of jurisdiction.

In the present case, the only connection between the asserted cause of action based upon the crash in Peru and Helicol's activity in Texas is a few hours of negotiation with Williams-Sedco-Horn in Houston. These discussions were attended by Helicol's general manager and concerned the business venture that provided the eventual setting for the accident in Peru. No evidence has been presented, however, indicating that the negotiations in any way dealt with the deceased workers or any matters leading or contributing to the helicopter crash in Peru. As such, a connection between the cause of action based upon the South American disaster and Helicol's activities in Texas is remote and at best coincidental. Likewise, there is no evidence of a connection between the cause of action and Helicol's dealings with Bell Helicopter in Fort Worth. A lawsuit based upon the use of a defective helicopter purchased from Bell might have indicated such a connection. In the present case, however, Hall and the other plaintiffs offered evidence of Helicol's negligence due to *pilot error*. There was no showing that the negligence extended beyond the events immediately surrounding the accident.

A contention has also been made that the cause of action was connected to Helicol's local activities because the contract between Helicol and Williams-Sedco-Horn obligated Helicol to acquire liability insurance payable in American dollars to cover any claim arising out of performance of the contract, and thereby created a third party beneficiary contract in favor of the deceased workers. We do not see, however, how this fact creates a link between the crash and Helicol's activities in Texas sufficient to justify the exercise of jurisdiction. There has been no allegation or proof that insurance was ever discussed during negotiations in Texas. The contract containing the clause was not signed in Texas. The liability coverage was provided by a foreign insurer, a corporation named Compania Sebulas. The "beneficiaries" of the contract were not Texas residents. The fact of insurance coverage is therefore not relevant to the present inquiry.

It has been stated that a nonresident may establish a "general presence" in a state, and may thereby subject himself to that state's jurisdiction even for *unrelated* causes of action asserted against him, when his contacts with the state may be described as "substantial, continuous, and systematic." *See Perkins* v. *Benguet Mining Co.*, 342 U.S. 437, 445-48, 72 S. Ct. 413, 96 L. Ed. 485 (1952). *Perkins* illustrates the type of activity that has been held sufficient to justify the exercise of jurisdiction based upon *unrelated* contacts with the forum. In *Perkins*, the corporate defendant carried out extensive business activities in the forum state, including banking, correspondence, maintenance of official records, holding of directors' meetings, and payment of employee salaries. These activities were so substantial that the forum became the temporary headquarters of the corporation. The exercise of jurisdiction under such circumstances was thus justified by the fact that the corporate defendant became, in effect, a resident of the forum. As one commentator has observed, "The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no mattter where the cause of action arose." Newton, *Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980).

In the instant case, Helicol in no way engaged in the "substantial, continuous, and systematic" activity necessary to establish a general business presence in Texas consistent with the holding of *Perkins* v. *Benguet Mining Co.*, *supra*. Helicol directed all of its business activities from its offices in South America. There is no evidence that it ever performed or sought to perform any transportation business in this state. While it did purchase expensive equipment from a Texas business, it did so only for use outside the state.

The central concern in all jurisdictional disputes is the relationship between the defendant, the forum, and the litigation. *Shaffer* v. *Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977). Of these, a connection between the forum and the litigation is no less important than contacts between the forum and the defendant. The former relationship is typically estab-

lished by showing the forum's "interest" in the lawsuit. *See World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *Kulko* v. *Superior Court*, *supra* at 92; *Shaffer* v. *Heitner*, *supra* at 222 (Brennan, J., dissenting) ("I believe that our cases fairly establish that the State's valid substantive interests are important considerations in assessing whether it constitutionally may claim jurisdiction over a given cause of action."). Thus, where any of the parties to a lawsuit are residents of the forum state, jurisdiction is supported by that state's interest in protecting its citizens, *Hess* v. *Pawloski*, 274 U.S. 352, 356, 47 S. Ct. 632, 71 L. Ed. 1091 (1927), and in providing those citizens with a means of obtaining restitution for wrongdoing. *McGee* v. *International Life Insurance Co.*, 355 U.S. 220, 223, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957). Likewise, a state has an interest in providing a procedure for peaceful resolution of disputes that arise in whole or in part within that state's territory or that affect property located within the state's boundaries. *Shaffer* v. *Heitner*, *supra* at 208. Jurisdiction in the forum state could also be supported in such cases by the likelihood that important records and witnesses would be located there, *McGee*, *supra* at 224; *Shaffer* v. *Heitner*, *supra* at 208, and the probability that the law of that state would apply to the cause of action. *See* Traynor, *Is This Conflict Really Necessary?*, 37 TEXAS L. REV. 657, 664 (1959).

The present case reveals no relationship between Texas and the suit being asserted against Helicol. None of the plaintiffs in this suit are Texas residents, nor were any of the deceased workers. All of the events relevant to the cause of action occurred in South America. The accident was extensively investigated by South American officials. Most, if not all, of the evidence and witnesses are located there. We find no cases in which the exercise of jurisdiction has been upheld on the basis of such a negligible relationship between the forum and the lawsuit.[1] The absence of such a relationship in this case, com-

[1] With one exception, all of the recent decisions of the United States Supreme Court in which exercises of *in personam* jurisdiction

bined with the insufficiency of related contacts between Helicol and Texas, leads us to conclude that the exercise of jurisdiction by the trial court was inconsistent with constitutional limitations on state power. Any other rule could permit the establishment of jurisdiction almost anywhere in the world.

We recognize that the exercise of jurisdiction over nonresident defendants, as defined and confined by the due process clause, has undergone considerable liberalization and expansion during modern times. Notwithstanding this expansion, however, the recent case of *World-Wide Volkswagen* v. *Woodson*, *supra*, reflects the view of the United States Supreme Court that this enlargement of the power of the states to reach beyond their boundaries is not without limitations. The Court noted in *World-Wide:*

> As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer* v. *Neff*, 95 U.S. 714, to the flexible standard of *International Shoe Co.* v.

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have been upheld have *at least* involved a cause of action that arose in the forum state or a plaintiff who was a state resident. *See, e.g.*, International Shoe Co. v. Washington, *supra;* McGee v. International Life Insurance Co., *supra;* Traveler's Health Ass'n v. Virginia, 339 U.S. 643, 70 S. Ct. 927, 94 L. Ed. 1154 (1950). The exception is Perkins v. Benguet Mining Co., *supra*, in which the exercise of jurisdiction was justified by "substantial, continuous, and systematic" contacts with the forum, as noted previously.

Even Justice Brennan, who dissented from the Court's denial of jurisdiction in World-Wide Volkswagen v. Woodson, *supra*, conceded that he might have reached a different conclusion in that case had the cause of action not arisen in the forum state. *See* World-Wide, *supra* at 312 n. 20.

> *Washington*, 326 U.S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictson on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states.

World-Wide Volkswagen v. *Woodson*, *supra* at 294 [quoting *Hanson* v. *Denkla*, 357 U.S. 235, 250-51, 78 S. Ct. 1228, 2 L.Ed. 2d 1283 (1958)]. We believe that the assertion of jurisdiction over Helicol in the present case exceeded the limits of due process. We therefore affirm the judgment of the court of civil appeals.

JACK POPE
Justice

Dissenting Opinion by Justice Wallace in which Justices Spears and Ray join.

OPINION DELIVERED:
February 24, 1982

IN THE SUPREME COURT OF TEXAS

No. C-243

ELIZABETH HALL, *et al.*,

Petitioners,

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Respondent.

FROM HARRIS COUNTY, FIRST DISTRICT

DISSENTING OPINION

I respectfully dissent.

In their briefs before this Court both parties agreed that our opinion in *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760 (Tex. 1977), controls the disposition of this case.

In *U-Anchor*, we stated:

> Article 2031b provides that a non-resident entering into a contract with a Texas resident performable in part by either party in Texas shall be deemed to be doing business in Texas . . . We agree that in this respect, as well as with respect to 'other acts that may constitute doing business,' Article 2031b reaches as far as the federal constitutional requirements of due process will permit. We let stand the statement in *Hoppenfeld* v. *Crook*, 498 S.W.2d 52 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 'that the reach of Art. 2031b is limited only by the United States Constitution.' . . . Furthermore, such a construction is desirable in that it allows the courts to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.'

In the *U-Anchor* opinion we specifically adopted the above language from *Hoppenfeld*. Also in *U-Anchor* this Court

approved the three-prong test set out in *O'Brien* v. *Lanpar Company*, 399 S.W.2d 340 (Tex. 1966). That three-prong test is: (1) the non-resident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

I will discuss the three elements necessary for jurisdiction in connection with the facts as set out in the majority opinion, adding some facts omitted in the majority opinion.

I.

It is undisputed that Helicol committed the following acts in Texas:

a. Purchased substantially all of its helicopter fleet in Fort Worth, Texas;

b. Did approximately $4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of $50,000 per month with Bell Helicopter Company, a Texas resident;

c. Negotiated in Houston, Harris County, Texas, with a Texas resident which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action;

d. Sent pilots to Fort Worth, Texas, to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia;

e. Sent maintenance personnel and pilots to Texas to be trained;

f. Had employees in Texas on a year-round basis;

g. Received roughly $5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and

h. Directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question.

I do not understand how it could be questioned that the above acts constituted the doing of a purposeful act or the consummation of some transaction in Texas sufficient to satisfy the first *U-Anchor* test.

II.

Helicol sent its general manager to the State of Texas where he negotiated a contract with a Texas resident to provide helicopter service. A provision of that contract required liability insurance payable in American dollars to cover a claim such as this one which arose directly from the performance of the contract. The three deceased individuals were thus third-party beneficiaries under the provisions of the contract requiring liability insurance to cover them while they were being transported by Helicol. In my opinion the requirement that the cause of action must arise from *or be connected* with a purposeful act or transaction is thus met. The claims of the three deceased workmen are thus connected with the act of Helicol in negotiating a contract wherein the deceased were third-party beneficiaries. There is authority for holding that the negotiation of a contract in Texas prior to its execution is sufficient to satisfy jurisdictional due process requirements. *Wright Waterproofing Co.* v. *Applied Polymers of America*, 602 S.W.2d 67, 71 (Tex. Civ. App.—Dallas) *writ ref'd n.r.e. per curiam*, 608 S.W.2d 164 (Tex. 1980) and *Michigan General Corp.* v. *Mod-U-Kraf Homes, Inc.*, 582 S.W. 2d 594, 596 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.). Further, it is not unreasonable to require a corporation which has purchased millions of dollars worth of goods in Texas to defend a suit in Texas. The corporation has significantly entered the business life of Texas. *Docutel* v. *S.A. Matra*, 464 F.Supp. 1209 (N.D. Tex. 1979).

III.

I would hold that the assumption of jurisdiction by Texas does not offend traditional notions of fair play and substantial justice, consideration being given to the nature and extent of the activity in Texas, the relative convenience of the parties, the benefits and protection of Texas afforded the respective parties, and the basic equities of the situation. The above recited activities by Helicol are a sufficient basis for holding that Helicol could reasonably be expected to defend an action in Texas which was connected with the acts committed by it in this State. It certainly would be no more inconvenient for Helicol to defend a lawsuit in Texas than it was for it to carry on a regular and substantial transaction of purchasing equipment, spare parts and services; have its personnel trained in Texas and have its corporate executives make regular trips to Texas. The general manager of Helicol testified that at least thirty-three trips had been made by executives of Helicol to Texas in the four to five years prior to the accident in question. The three deceased workmen were hired in Texas by a Texas citizen and were entitled to the benefits and protection of the Texas courts.

I would hold that the majority's reliance on *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) is unfounded. The holding in *World-Wide* was based upon the finding that the automobile dealer and distributor in the State of New York had absolutely no contacts, ties or relations with the State of Oklahoma, and thus there was no jurisdiction. In contrast, Helicol has a long history of substantial contacts, ties and relations with the State of Texas. As we stated in *U-Anchor*, our long-arm statute, Article 2031b, reaches as far as the federal constitution requirements of due process will permit. The construction of our long-arm statute should focus on the constitutional limitations of due process. Those limitations are that our exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. I would hold that fair play and substantial justice are best served by providing a forum for the depen-

dents of the three deceased workmen who were hired in Texas, by a citizen of the State of Texas, to fulfill a contract negotiated in Texas, against Helicol who has a long history of substantial contacts and transactions within the State of Texas.

I would reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

JAMES P. WALLACE

Justices Spears and Ray join in this dissent.

OPINION DELIVERED: February 24, 1982

COURT OF CIVIL APPEALS OF TEXAS, HOUSTON (1st Dist.)

No. 17882

HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL"),

Appellant,

v.

ELIZABETH HALL, *et al.*,

Appellees.

Appeal From The District Court Of Harris County

This is an appeal from a money judgment awarded to appellees in a wrongful death action arising out of a helicopter crash in Peru, South America. Specifically, Helicopteros Nacionales De Colombia, S.A. (Helicol) is appealing from an order overruling its special appearance pursuant to Rule 120a, T.R.C.P.

We reverse and order the case dismissed.

Helicol, South American, corporation with its residence in Colombia, was sued by the appellees, survivors of four men killed in a helicopter accident which occurred in the jungles of Peru in January, 1976. Service was had upon Helicol under the "long-arm" statute, Tex.Rev.Civ.Stat.Ann., art. 2031b.

Although the actions by the survivors of the four men were filed separately, the four cases ultimately were consolidated for all purposes. Prior to consolidation, however, the special appearance pursuant to Rule 120a was timely filed in each of the causes. Pursuant to an agreement between counsel for Helicol and counsel for appellees, a special appearance hearing was conducted with testimony presented and evidence admitted in only one of the cases. It was agreed by the attorneys for all the parties that the testimony and evidence presented during that special appearance hearing would be filed and used as the testimony and the evidence presented by the parties in

each of those cases. The courts in all four cases honored those agreements and after considering the testimony and the evidence, overruled the special appearances filed by Helicol. The transcribed testimony and attached exhibits which have been filed with this court on appeal are the same transcribed testimony and exhibits considered by the trial court in all four cases. A motion for reconsideration of the overruling of Helicol's special appearance was filed and also overruled. The case proceeded to a jury trial on the merits. A verdict was returned against Helicol and appellees were jointly awarded $1,141,200, together with post-judgment interest.

We are not here concerned with the record in this case as it relates to the verdict and judgment. Our sole concern is whether or not the evidence adduced at the special appearance hearing supports the overruling of Helicol's special appearance.

The appellant asserts two points of error, the first of which avers that the court erred in overruling the special appearance of Helicol because Helicol, a South American corporation, was not doing business in Texas and did not otherwise engage in acts which come within the purview of art. 2031b. By point of error two, Helicol complains that the trial court erred in overruling the Rule 120a special appearance of Helicol because Helicol, a foreign corporation, did not have sufficient contacts with Texas to meet the requirements of the constitutional minimum contacts test so that the exercise of *in personam* jurisdiction over Helicol offended the traditional notions of fair play and substantial justice as set out by the Fourteenth Amendment of the U.S. Constitution.

Pursuant to Rule 120a, a defendant may file a special appearance and if such appearance is overruled, the defendant may then enter a general appearance. By entering the general appearance, the defendant does not waive the right to appeal the denial of its special appearance. Rule 120a, T.R.C.P.

Originally, appellees attempted to serve Helicol by serving a sister subsidiary of Helicol, Avianca, Inc., a New York

corporation authorized to do business in Texas. It was undisputed that while both subsidiaries are owned by Aerovias Nacionales De Colombia, S.A., that they have no mutual business connections. In *Gentry* v. *Credit Plan Corporation of Houston*, 528 S.W.2d 571 (Tex.1975), the court held that a subsidiary will not be responsible for the acts of a parent except "where the management and operations are assimilated to the extent that the subsidiary is simply a name or conduit through which the parent conducts its business." The evidence in the case shows Helicol is not a part of Avianca, Inc. and therefore jurisdiction cannot be maintained over Helicol by serving Avianca, Inc.

Appellees next sought to maintain jurisdiction over Helicol pursuant to art. 2031b. Article 2031b provides in pertinent part:

> Sec. 3. Any foreign corporation . . . that engages in business in this State . . . and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to appointment by such foreign corporations . . . of the Secretary of State of Texas as an agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation . . . is a party or is to be made a party.
>
> Sec. 4. For the purposes of this Act, and without including other acts that may constitute doing business, any foreign corporation, . . . shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located inside or outside Texas shall be deemed doing business in this State.

In order to maintain jurisdiction over Helicol, it must be shown that it either committed a tort in Texas or entered into a

contract to be performed in whole or in part in Texas. The undisputed evidence shows that the helicopter crash occurred in the jungles of Peru. Clearly, Helicol did not commit a tort in whole or in part in Texas, and thus the tort requirements of art. 2031b are not met. The record is in dispute as to whether Helicol entered into a contract to be performed in whole or in part by either party in Texas.

The facts in this case show that a joint venture known as Williams-Sedco-Horn (WSH) contracted with Helicol to furnish helicopter transportation service in connection with the construction of a pipeline in Peru. WSH employed the four men who died in the helicopter crash. There was never a contract between Helicol and appellees and Helicol's services were to be provided only in Peru.

A dispute arises in the evidence as to whether the contract between WSH and appellants was negotiated in Texas, Oklahoma or Peru. Helicol introduced testimony to show the contract was negotiated in Oklahoma; the parties discussed the amount and size of equipment in Houston, Texas, and that it was finalized, written and executed in Spanish in Peru. Helicol also showed that the contract required final approval from the Peruvian government. Payment for Helicol's services was invoiced in Peru and then American dollars were to be desposited in bank accounts in Panama and New York City. It is undisputed that the money came from a Texas bank where WSH had an account. Helicol did not have any bank accounts in Texas. The following testimony was offered by Mr. Restrepo, called by Helicol:

> A: The contract that was entered into by Helicol with Williams-Sedco-Horn for the transportation that was involved in this accident, was that contract negotiated or signed in the United States?
>
> A: No, sir.
>
> Q: Where was it signed, sir?
>
> A: Lima.

Q: That's Lima, Peru?

A: Yes.

Q: Where was this signed and executed?

A: In Lima, Peru.

Q: This contract, Mr. Restrepo, why was it executed for Helicol by a lawyer in Peru, can you tell the Court that?

A: Because it has to be done according to the Peruvian laws.

Q: The contract had to be executed in accordance with Peruvian laws, is that what you said?

A: Yes.

Q: Which Peruvian governmental agency handled the contractual negotiations?

A: The Peruvian Air Force.

Q: Did they participate in the writing of the contract?

A: Yes, they have to approve the contract.

Q: So the contract even had to be printed on official papers of Peru?

A: Yes, sir.

Q: Just to make it perfectly clear, Mr. Restrepo, this contract was not executed in the United States, is that right, sir?

A: No.

Q: He (Novak) testified in his deposition that you made the deal down here in Houston, that is where you entered into the agreement for Helicol to provide the helicopter services, is that right?

A: They called me to discuss the amount and the size of the helicopter, but the deal was already done, like I said, in Peru.

Further, the entire discussion of the jurisdiction question seems to be answered by paragraph 19 of the contract, which states that all parties agree that Lima, Peru, is the residence for all related to the contract and that the parties submitted to the jurisdiction of Peru.

Appellees contend that the contract was to be performed in part in Texas because of a provision therein, "that payment must be paid by the main office . . ." of WSH. However, even if WSH's main office were in Houston, the contract directed that the payments be made to Helicol's accounts in New York or Panama City. Nor can we determine that the place of payment in the contract had any significant bearing on the parties' contractual relations. What difference could it have made with either party if the payments were made from Texas, California or wherever so long as they were in fact made? Consider the consequences of WSH's moving its "main office" to Mexico or elsewhere in the world. Would appellees then contend that such other places would be where the contract was to be partially performed? We conclude that such provision for payment "by the main office" could only mean that WSH was free to make the payments due to Helicol from wherever it chose.

There seems to be absolute agreement by the courts, state and federal, that before a non-resident defendant can be made to answer to the jurisdiction of Texas under its "long-arm" statute, it must be shown that such defendant is susceptible to the threefold "minimum contacts" and "fair play" tests for jurisdiction as set forth in *O'Brien* v. *Lanpar*, 399 S.W.2d 340 (Tex. 1966) and affirmed in the recent Texas Supreme Court case of *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760, 762 (Tex.1977):

> 1) The non-resident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
>
> 2) The cause of action must arise from, or be connected with, such act or transaction; and
>
> 3) The assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the forum state afforded the respective parties, and the basic equities of the situation. Id. 399 S.W.2d at 342.

The evidence before us fails to show that any of the foregoing requirements was met so as to give Texas jurisdiction of appellees' causes of action.

In a very similar fact situation involving a fatal helicopter crash off the coast of Ghana, Africa, Judge Seals in *Reich* v. *Signal Oil and Gas Company*, 409 F. Supp. 846 (S.D.Tex.1974) aff'd mem. 530 F.2d 974 (5th Cir. 1976), gives an exhaustive analysis of the requirements and the cases involving the Texas "long-arm" statute. In *Reich*, the plaintiffs sought to establish "doing business" in Texas by showing that the helicopter in question was manufactured in Italy by Agusta and leased to defendant Bristow, a British corporation, pursuant to a licensing agreement with Agusta. The helicopter was manufactured by Agusta according to a design owned by Bell Helicopter Co., a corporation doing business in Texas. The helicopter was never in Texas. The plaintiffs claimed jurisdiction in Texas because Bristow had "numerous and substantial business contacts in Texas" and Agusta had entered into a licensing contract in Texas. In holding that the plaintiffs had not met their burden as required by art. 2031b, the court stated:

> However, assuming arguendo that Agusta's Licensing Agreement was entered into in Texas, Plaintiffs have not alleged a contract cause of action, and this court has found no authority to support the thesis that one who is neither a party nor a third-party beneficiary to a contract may raise the contract for the purpose of establishing jurisdiction over a nonresident defendant. (citation omitted) But even if there were such a principle of law it is the opinion of this Court that under the facts of this case the Licensing Agreement would be insufficient to support a finding of jurisdiction. The mere fact of the existence of a contract possibly entered into in Texas does not provide jurisdiction in and of itself. The same basic factors of jurisdiction under the letter of the state statute and under the requirements of constitutional due process still obtain.

In the *U-Anchor* case, supra, the court observed that the Texas "long-arm" statute may reach only as far as the federal constitutional requirements of due process will permit and

denied the Texas court jurisdiction over Burt, a nonresident. The basis of such denial was that Burt's contacts with Texas were minimal and fortuitous and that he had not "purposefully" carried on any activities within the state.

The facts before us are even stronger relative to Helicol's contacts with Texas. Helicol has neither offices, business records, employees, property, bank accounts nor a telephone number in Texas. It does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc.* v. *Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Appellees' arguments, that "fair play" and "substantial justice" would best be served by requiring Helicol to appear before a court in Texas, are not persuasive. The persons killed in the helicopter crash were residents of Oklahoma, Illinois, Arizona and South America. None of them or their representatives had any contacts with Texas. The contract between Helicol and WHS specifically provided that all parties thereto were to be subject to the forum and laws of Peru. Clearly then, Texas has no special interest in the suit arising between parties to the contract who had already committed themselves to be bound by Peruvian law.

Appellees have failed to show that Helicol had sufficient minimum contacts with Texas as would invoke the contract, tort or fair play requirements of the Texas "long-arm" statute.

We have considered appellees' contention that Helicol's action in filing a suit against Bell Helicopter Company constituted a submission by Helicol to the jurisdiction of Texas. We do not agree that this is true. When Helicol filed its suit against Bell, Bell moved for and was granted a consolidation.

Helicol's action, being a mandatory cross-claim under art. 2212a(2)(g), Tex.Rev.Civ.Stat.Ann., was required to be filed in the primary suit or lost. Helicol's right to relief against Bell had already been established when the primary suit was filed.

The judgments of the trial courts in overruling Helicol's special appearance are reversed; judgment is rendered granting Helicol's Rule 120a special appearance; and this case is ordered dismissed for lack of jurisdiction.

/s/ Henry E. Doyle
HENRY E. DOYLE
Associate Justice

Associate Justices Warren and Evans also sitting.

Judgment rendered and opinion filed January 22, 1981.

WYATT H. HEARD
JUDGE, 190th DISTRICT COURT
CIVIL COURTS BUILDING
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MARCH 28, 1978

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RE: No. I,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,
190TH DISTRICT COURT

GENTLEMEN:

You will recall that we heard the above on February 28th and March 6th. After listening to all of the evidence, summations of

counsel and reading the briefs submitted on behalf of the respective interests, the court overrules the motion for special appearance.

Counsel will prepare the appropriate order for entry by the court.

Sincerely,

/s/ Wyatt H. Heard
WYATT H. HEARD
WHH: ME

THE SUPEME COURT OF TEXAS
P.O. BOX 12248 CAPITOL STATION
AUSTIN, TEXAS 78711

October 6, 1982

Mr. George E. Pletcher, Atty.
Helm, Pletcher & Hogan
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Houston, Texas 77010

Mr. John McCamish, Sr. and
Mr. James Ingram, Attys
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San Antonio, Texas 78205

RE: C-243: ELIZABETH HALL ET AL. vs. HELICOPTEROS NACIONALES DE COLOMBIA, S.A. ("HELICOL")

NO. 17,882 in the First Court of Appeals
NO. 1,087,423 in the 190th District Court, Harris County

Gentlemen:

Today, the motion for rehearing on behalf of Helicopteros Nacionales was overruled.

The dissenting opinion of July 21, 1982 is withdrawn and the dissenting opinion by Justice Pope of this date is delivered.

Copies of the new dissenting opinion are being mailed to Justice Henry E. Doyle, First Court of Appeals, Judge, Wyatt H. Heard, 190th District Court, and Harris County District Clerk, Mr. Ray Hardy.

Very truly yours,

GARSON R. JACKSON, Clerk

/s/By Mary M. Wakefield
MARY M. WAKEFIELD
Chief Deputy

Encl: dissenting opinion

TEXAS REVISED CIVIL STATUTES ANNOTATED
ARTICLE 2031b.

Art. 2031b. Service of process upon foreign corporations and nonresidents

Failure to appoint agent; designation of Secretary of State as lawful attorney

Section 1. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person required by any Statute of this State to designate or maintain a resident agent, or any such corporation, association, joint stock company, partnership, or non-resident natural person subject to Section 3 of this Act, has not appointed or maintained a designated agent, upon whom service of process can be made, or has one or more resident agents and two (2) unsuccessful attempts have been made on different business days to serve process upon each of its designated agents, such corporation, association, joint stock company, partnership, or non-resident natural person shall be conclusively presumed to have designated the Secretary of State of Texas as their true and lawful attorney upon whom service of process or complaint may be made.

Engaging in business in state; service upon person in charge of business

Sec. 2. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such

service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants principal place of business by registered mail, return receipt requested.

Act of engaging in business in state as equivalent to appointment of Secretary of State as agent

Sec. 3. Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or non-resident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

Doing business in state; definition

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State.

Delivery of process to Secretary of State; forwarding copy

Sec. 5. Whenever process against a foreign corporation, joint stock company, association, partnership, or non-resident

natural person is made by delivering to the Secretary of State duplicate copies of such process, the Secretary of State shall require a statement of the name and address of the home or home office of the non-resident. Upon receipt of such process, the Secretary of State shall forthwith forward to the defendant a copy of the process by registered mail, return receipt requested.

Non-residency after accrual of cause of action; service upon Secretary of State

Sec. 6. When any corporation, association, joint stock company, partnership or natural person becomes a non-resident of Texas, as that term is commonly used, after a cause of action shall arise in this State, but prior to the time the cause of action is matured by suit in a court of competent jurisdiction in this State, when such corporation, association, joint stock company, partnership or natural person is not required to appoint a service agent in this State, such corporation, association, joint stock company, partnership or natural person may be served with citation by serving a copy of the process upon the Secretary of State of Texas, who shall be conclusively presumed to be the true and lawful attorney to receive service of process; provided that the Secretary of State shall forward a copy of such service to the person in charge of such business or an officer of such company, or to such natural person by certified or registered mail, return receipt requested.

Cumulative effect of act

Sec. 7. Nothing herein contained shall be construed as repealing any statute in force in this State in reference to service of process, but this Act shall be cumulative of all existing statutes. Acts 1959, 56th Leg., p.85, ch. 43.